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Agenda Item: 4A

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
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TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION OF VERIZON)
NEW JERSEY INC. FOR APPROVAL (I) OF A NEW)
PLAN FOR AN ALTERNATIVE FORM OF REGULATION)
AND (ii) TO RECLASSIFY MULTI-LINE RATE)
REGULATED BUSINESS SERVICES AS COMPETITIVE)
SERVICES, AND COMPLIANCE FILING)

DECISION AND ORDER

DOCKET NO. TO01020095

(SERVICE LIST ATTACHED)

PREFACE

This Decision and Order memorializes the decisions made by the Board of Public Utilities (Board) at its public meeting of June 19, 2002 regarding the Board's approval, with modifications, of (1) a new Plan for an Alternative Form of Regulation proposed by Verizon New Jersey Inc. (VNJ or Company), pursuant to N.J.S.A. 48:2-21.18, and (2) VNJ's proposal to reclassify rate regulated multi-line business services as competitive services pursuant to N.J.S.A. 48:2-21.19. By this Decision and Order, the Board HEREBY AFFIRMS all decisions by Commissioner Butler made during the course of this proceeding.

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I. INTRODUCTION

Pursuant to the New Jersey Telecommunications Act of 1992 (hereinafter, 1992 New Jersey Act), N.J.S.A. 48:2-21.16 et seq., this matter was initiated by the filing on February 15, 2001 of a petition by VNJ requesting approval by the Board of a new Plan for an Alternative Form of Regulation (PAR-2 or New Plan)¹ to replace its current Plan for an Alternative Form of Regulation (PAR-1 or Current Plan), which was approved by the Board on May 6, 1993.² VNJ simultaneously filed a petition to reclassify rate regulated multi-line business services as competitive services pursuant to N.J.S.A. 48:2-21.19. The matters were heard together, with Commissioner Frederick F. Butler acting as Presiding Officer throughout the hearings. This Order memorializes the Board's decisions regarding both petitions.

A. The Telecommunications Act of 1992

In the 1992 New Jersey Act, the Legislature found and declared that it is State policy to, among other things, permit the Board "the authority to approve alternative forms of regulation in order to address changes in technology and the structure of the telecommunications industry; to modify the regulation of competitive services; and to promote economic development." N.J.S.A. 48:2-21.16(a)(5). Consistent with this declaration of State policy, the Act permits a local exchange telecommunications company (LEC) to petition the Board to be regulated under a plan for an alternative form of regulation. N.J.S.A. 48:2-21.18. An "alternative form of regulation" is defined as "a form of regulation of telecommunications services other than traditional rate base, rate of return regulation to be determined by the [B]oard and may include, but not be limited to, the use of an index, formula, price caps or zone of rate freedom." N.J.S.A. 48:2-21.17. The Board is empowered to review a plan for an alternative form of regulation and may approve such a plan, or approve it with modifications, if it finds, after notice and hearing, that certain statutory criteria have been met. Specifically, pursuant to N.J.S.A. 48:2-21.18(a), to approve a plan for an alternative form of regulation, the Board must find that the plan:

- (1) will ensure the affordability of protected telephone services;

¹ VNJ's proposed PAR-2 is appended hereto as Attachment A.

² I/M/O The Application of New Jersey Bell Telephone Company for Approval of its Plan for an Alternative Form of Regulation, Docket No. TO92030358, Decision and Order (May 6, 1993) (PAR-1 Order); affirmed, In re Application of New Jersey Bell Telephone Company, 291 N.J.Super. 77 (App. Div. 1996).

- (2) will produce just and reasonable rates for telecommunications services;
- (3) will not unduly or unreasonably prejudice or disadvantage a customer class or providers of competitive services;
- (4) will reduce regulatory delay and costs;
- (5) is in the public interest;
- (6) will enhance economic development in the State while maintaining affordable rates;
- (7) contains a comprehensive program of service quality standards, with procedures for Board monitoring and review; and
- (8) specifically identifies the benefits to be derived from the alternative form of regulation.

The 1992 New Jersey Act also authorizes the Board to determine, after notice and hearing, whether a telecommunications service is a competitive service based on evidence of ease of market entry, presence of other competitors, and the availability of like or substitute services in the relevant geographic area. N.J.S.A. 48:2-21.19(b).

B. VNJ's Proposed Plan for an Alternative Form of Regulation

VNJ's proposed PAR-2 is intended to replace its existing PAR-1 plan and to supersede all provisions of that plan contained in the Board's PAR-1 Decision and Order in Docket No. TO92030358, dated May 6, 1993. As proposed on February 15, 2001, PAR-2 is intended by VNJ to commence on the date the Board approves it. By its terms, PAR-2 has no expiration date, but it allows VNJ, at any time following its approval, to file for approval of a new plan, or petition the Board to modify any of the provisions of PAR-2 to reflect changed conditions. See Attachment A, §I.

Under PAR-2, VNJ committed itself to achieve the PAR-1 Opportunity New Jersey (ONJ) service capability targets. See Attachment A, §II.A. PAR-2 also commits VNJ to fulfill the requirements of the Access New Jersey (ANJ) program as enhanced in several ways. Ibid. First, PAR-2 expands the existing commitment to ANJ by an additional \$20 million as follows: (a) \$14 million would be added to the CPE³ fund, and the list of eligible equipment will be

³ "CPE" means "customer premises equipment."

expanded to include coder-decoders (CODECs) for Asynchronous Transfer Mode (ATM) Service; and (b) \$6 million would be added to support the video portal for the development of interactive video content, equipment upgrades for video over Internet Protocol, maintenance and staffing. See Attachment A, §A.1. Second, as proposed, PAR-2 would extend discounted ANJ rates until the end of 2004, with the understanding that contracts signed in 2004 would continue those ANJ rates for a minimum of three additional years, i.e., through 2007. See Attachment A, §II.A.2.

VNJ's proposed PAR-2 would also expand the Lifeline Program, a program designed to make basic telecommunications services affordable to low-income citizens and senior citizens. VNJ would expand Lifeline by adopting a self-certification system by which the customer of record would receive Lifeline service upon verbal notification to VNJ of eligibility. The Company's proposal gives a customer 60 days to provide written certification that they are participating in one of several social services or income support programs, or in the case of low-income seniors 65 and over, to submit documentation (e.g., a copy of the most recent federal or state income tax return) showing that they meet low-income requirements. If the information is not provided in 60 days, VNJ would remove the Lifeline discount and would not restore it until the Company received the verification information. VNJ reserved the right to verify all information provided. See Attachment A, §II.B.1. Under the expanded Lifeline Program, eligibility would be expanded to include low-income senior customers (65 and over) at or below 150% of Poverty Level,⁴ and the list of eligible programs would be expanded to include participation in either Supplemental Security Income or Medicaid programs. See Attachment A, §II.B.2 and 3. VNJ's expanded Lifeline Program would include an outreach program utilizing direct mail or bill inserts, outreach information presentations, newspaper ads, radio ads, press releases and posting on the Company's web site. The PAR-2 proposal would also apply the expanded Lifeline eligibility criteria and self-certification procedure to the Link-Up America program, a program that underwrites the initial hook up (line connection) charge for eligible citizens. See Attachment A, §II.B.4 and 5.

The proposed PAR-2 also provides for a streamlined process to introduce new services and change prices of existing services. See Attachment A, §III. VNJ's PAR-2 asserts that such a streamlined process to introduce new services "will enable customers to benefit immediately

⁴ As published in the Federal Register for the 48 contiguous states.

from the capabilities of an advanced telecommunications infrastructure and competition.” See Attachment A, §III.A. According to PAR-2’s “streamlined process,” all new service offerings would become effective five business days after filing with the Board, without a requirement of prior Board approval. Board approval would be required to classify a new service offering as competitive. See Attachment A, §III.A.1. The Board filing must include a brief description of the service and a copy of the tariff pages with all terms and conditions. See Attachment A, §III.A.2. PAR-2 provides that for new services proposed as competitive offerings, the filing for a new competitive service offering must include sufficient information to show compliance with N.J.S.A. 48:2-21.19(b). See Attachment A, §III.A.3. PAR-2 expressly states that the Board shall retain its authority to investigate and suspend, if necessary, all aspects of the service if the filing violates a Board rule or is otherwise not in compliance with law. See Attachment A, §III.A.4.

Throughout its term, PAR-2 permits VNJ to propose revenue neutral rate restructures for its rate regulated services, and requires the Board to issue a decision on any such proposal within 90 days of the filing. Failing such a timely Board decision, PAR-2 provides that the proposal shall be deemed approved. See Attachment A, §III.B. PAR-2 provides that revenue neutrality in such filings is not limited to within service categories. Ibid. PAR-2 requires that revenue neutral rate restructure filings be supported by currently available and prospective data that includes the following: (1) a description of the service(s) affected and an explanation as to why the restructure is proposed; (2) calculations demonstrating the revenue neutral effect of the proposed restructure; and (3) a description of the impact of the proposed restructure on all affected classes of customers, demonstrating that no other class is unduly advantaged over another. Ibid.

With regard to the reclassification of services as competitive, PAR-2 provides that VNJ may petition the Board to reclassify an existing rate regulated service as competitive, and requires VNJ to support its petition with affidavits or other proofs evidencing the competitive nature of the service as required by the Telecommunications Act of 1992. In making such a filing, VNJ is required to follow the safeguard and notice provisions set forth in Section V of PAR-2. See Attachment A, §IV.

PAR-2 provides that VNJ shall observe a series of specific safeguards, which are intended to provide assurances both to the Board and to VNJ customers and competitors. The safeguards

are intended to apply to all VNJ competitive telecommunications services and those that VNJ seeks to classify or reclassify as competitive. See Attachment A, §V.

Among these safeguards is the imputation of rate regulated charges, according to which VNJ agrees that the rates that it charges for a competitive service shall exceed the rates charged to others for any noncompetitive (i.e., rate regulated) service used by VNJ to provide the competitive service. See Attachment A, §V.A.

PAR-2 also provides for the filing and maintenance of tariffs for competitive services “in conformance with the requirements of Docket No. TX92020201,”⁵ unless the Board does not require tariffs for particular services. See Attachment A, §V.B. According to PAR-2, the rates for competitive services may be either in the public filed tariffs or, if the Board determines that the rates are proprietary, on file with the Board. Ibid. If rates for competitive services are not in Verizon NJ's public tariffs, under PAR-2, VNJ will permit interested parties to review the unpublished rates under the terms of an appropriate protective agreement “such as those currently used in cases before the Board.” Ibid. PAR-2 also provides that changes or additions to tariffs for competitive services shall be made in accordance with the competitive service rules in Docket No. TX92020201, or in subsequent proceedings before the Board. Ibid.

PAR-2 requires, for new competitive services (and in connection with any filing to make an existing service competitive), that VNJ identify each rate regulated⁶ service, if any, which is incorporated in its competitive services and make all such noncompetitive services separately available to any customer under tariff terms and conditions, including price, identical to those used by VNJ in providing its competitive service. See Attachment A, §V.C.

In order to demonstrate that rate regulated services will not subsidize competitive services, PAR-2 requires VNJ to provide annual reports to the Board's Staff showing that, in the aggregate, the total revenues for VNJ's competitive services exceed the total direct costs of the services. See Attachment A, §V.D. In addition, in connection with any filing to make a service competitive, VNJ must file with the Board direct cost data. Ibid. According to PAR-2,

⁵ Docket No. TX92020201 is an expired rulemaking docket.

⁶ For purposes of Section V, rate regulated services shall mean all Verizon NJ services other than those (1) designated by the Board as competitive or (2) not regulated by the Board.

proprietary information shall be treated in accordance with the terms of an appropriate protective agreement, such as those currently used in cases before the Board. Ibid.

With regard to filings proposing new competitive telecommunications services, PAR-2 requires VNJ to file notice with the Board no less than 14 days in advance of their introduction, or as otherwise required by the Board in Docket No. TX92020201. VNJ agrees that it will provide notice to interested parties of the new service at the time such a filing is made with the Board. See Attachment A, §V.E.1. In addition, under PAR-2 VNJ agrees that, 30 days prior to proposing the reclassification of an existing rate regulated service as competitive, it shall provide notice to interested parties of its intent to make such a filing with the Board. See Attachment A, §V.E.2. The notice to the Board and interested parties shall include a brief description of the filing. A copy of the filing will be provided to interested parties upon request, except that proprietary information shall be treated in accordance with the terms of an appropriate protective agreement, such as those currently used in cases before the Board. See Attachment A, §V.E.3.

PAR-2 incorporates the standards for determining and monitoring the competitiveness of services set forth in the Board's rulemaking proceeding in Docket No. TX92020201, subject to any additional regulations applicable to local exchange carrier competitive telecommunications services. See Attachment A, §V.F. PAR-2 also provides that in monitoring the competitiveness of services to determine whether a service previously found to be competitive should be reclassified, the Board will consider whether:

- (1) the market concentration for an individual carrier results in a service no longer being sufficiently competitive;
- (2) significant barriers to market entry exist;
- (3) there is a lack of significant presence of competitors;
- (4) there is a lack of like or substitute services in the relevant geographic area; and
- (5) a carrier is providing safe adequate and proper service. Ibid.

PAR-2 sets forth reporting requirements for service quality, infrastructure deployment, and the monitoring of competitive services. With regard to service quality, PAR-2 provides that, until replaced by a new set of performance standards approved by the Board, VNJ will continue to file the service quality reports it currently provides to demonstrate compliance with the service

quality benchmarks established by the Board in Docket No. TO87050398.⁷ See Attachment A, §VI.A. In summary, those reporting requirements provide that for failure to comply with the exception levels of the applicable service quality benchmarks, a threshold violation shall require VNJ to investigate the sub-standard performance, take appropriate corrective action and inform Board's Staff of the results. Ibid. For surveillance level threshold violations, in addition to the exception level requirements, these service quality standards require that a formal report be filed with the Board, which may take action as it deems appropriate. Ibid. PAR-2 provides that the Board has the right to terminate the Plan, after notice and hearing, in the event that a substantial degradation of service is found to exist. Ibid.

PAR-2 also requires VNJ to file an annual report with the Board detailing its progress on ANJ and a biennial infrastructure deployment report detailing its progress on ONJ. See Attachment A, §VI.B. With regard to the monitoring of competitive services, PAR-2 provides that VNJ will comply with the reporting requirements contained in N.J.A.C.14:10-5.9. See Attachment A, §VI.C.

II. PROCEDURAL HISTORY

On December 22, 2000, the Board issued an Order in this docket (TO00120955) and in Docket Nos. TO99120934 and TO92030358 accepting the withdrawal of a Competitive Telecommunications Plan (CTP) petition filed by VNJ on December 30, 1999.⁸ The Board's Order also directed VNJ to file a new plan on or before February 15, 2001 and, because PAR-1 was scheduled to expire on December 31, 2000, the Board in the December 22, 2000 Order also extended PAR-1 for an additional year, to December 31, 2001. Id. at 21.

The December 22, 2000 Order specifically identified information to be included in VNJ's PAR-2 petition. Among other things, the December 22, 2000 Order indicated that that any proposal including a request for a rate revision should contain "a detailed cost of service study and resulting revenue analysis along with proposed rates, including increases or decreases,

⁷ Docket No. TO87050398 is commonly referred to as the "Rate Stability Plan" proceeding. See Section III.F, infra, for a discussion of the service quality standards approved by the Board in Docket No. TO87050398.

⁸ I/M/O The Application of Bell Atlantic-New Jersey, Inc. for Approval of a Modified Plan for an Alternative Form of Regulation and to Reclassify all Rate Regulated Services as Competitive Services, and I/M/O the Application of Verizon New Jersey Inc. for Approval of an Extension of its Plan for an Alternative Form of Regulation, Docket Nos. TO99120934, TO92030358 and TO00120955, (December 22, 2000 Order). BPU Docket No. TO99120934 is commonly referred to as the CTP (Competitive Telecommunications Plan) proceeding. A complete procedural history of the CTP proceeding, a precursor to the PAR-2 proceeding, is set forth in detail in Appendix A of the December 22, 2000 Order.

individually, for every VNJ rate regulated service . . . [and] an analysis of the price elasticity of demand for that service.” Id. at 4. Additionally, the Board stated that any proposed revisions to basic residential service “must include a proposal for affordable POTS⁹ with a specific proposal for future treatment for additional lines, and in particular whether they should be subject to the same treatment as the initial line.” Ibid.

The December 22, 2000 Order also directed VNJ to provide the following:

- (1) a specific proposal to address alleged subsidies in basic exchange services, including the specific dollar amounts and sources of any subsidies, and an analysis and recommendation of whether a Universal Service Program should be instituted;
- (2) a detailed proposal for an expanded Lifeline program to include, at a minimum, senior citizens and ratepayers that are not currently eligible under the existing plan; a specific proposal regarding outreach measures to enhance subscribership; and details concerning the benefits and costs of implementing an automatic enrollment program allowing self-certification of eligibility;
- (3) a proposal for the continuation of the existing ANJ program beyond the year 2001, including expansion of current ANJ services;
- (4) a new comprehensive proposal of service quality standards that includes all applicable retail metrics contained in the Carrier-to-Carrier Guidelines approved by Board Order dated July 13, 2000 in Docket Nos. TX95120631 and TX98010010, with new standards at least as stringent as those contained in the Carrier-to-Carrier Guidelines;
- (5) a comprehensive financial analysis of VNJ's earnings, with particular attention to the existing dividend policy;
- (6) a detailed quantification of the savings resulting from the 1997 Bell Atlantic/NYNEX merger and the 2000 Bell Atlantic/GTE merger; and a plan for the distribution of savings to customers, in the event the Board ordered such a distribution;
- (7) an analysis and recommendation as to whether existing provisions of PAR-1, such as Revenue Sharing, Exogenous Events and Earnings Reporting, should be included, modified or eliminated, in the new Plan, as well as how these provisions meet the eight criteria in the Act;
- (8) all local service offerings that Verizon Corporation or operating affiliates have introduced in their respective service territories, particularly those states in which geographic limitations have been lifted;

⁹ “POTS” means “plain old telephone service.”

- (9) analysis and recommendations regarding geographic expansion of local calling areas and basic service options in addition to POTS; and
- (10) recommendations as to the extent to which existing pricing flexibility should or should not be expanded.

[Id. at 4-7].

Responding to the Board's December 22, 2000 Order, on February 15, 2001, VNJ filed its Petition and Direct Testimony requesting Board approval of: (1) PAR-2; and (2) VNJ's simultaneous request to reclassify rate regulated multi-line business services as competitive. VNJ's petition, which included an electronic copy (where applicable) of work-papers, cost models, spreadsheets, and other supporting materials, was provided to the Board, Board Staff and Counsel, and all other interested parties that executed a confidentiality agreement. VNJ's petition was supported by the pre-filed direct testimony of ten witnesses: Mr. Dennis M. Bone; Mr. Edwin F. Hall; Ms. Linda D. Thoms; panel testimony of Ms. Nancy Matt, Mr. Bruce Meacham, Ms. Marcia S. Prosini, and Dr. William E. Taylor; panel testimony of Mr. Harry M. Shooshan, III, Dr. William E. Taylor and Mr. Joseph H. Weber; and panel testimony of Mr. Harold E. West and Dr. William E. Taylor.

By letter motion dated February 26, 2001, the New Jersey Division of the Ratepayer Advocate (RPA or Advocate) asked the Board to clarify certain provisions of the Board's December 22, 2000 Order so as to determine whether VNJ's February 15, 2001 filing complied with that Order. On February 27, 2001, AT&T Communications Inc. of New Jersey, L.P. (AT&T) filed an answer and cross-petition requesting that the Board issue an order to structurally separate the wholesale and retail operations of VNJ. By letter dated March 19, 2001, VNJ moved to dismiss AT&T's cross-petition. By letters dated March 20, 2001 and April 6, 2001, respectively, Sprint Communications Company, L.P. (Sprint) recommended a separate docket for any consideration of structural separation issues, and the Advocate recommended that the Board broaden the scope of the PAR-2 proceeding to include an investigation of structural separation issues. By Order of Approval dated June 20, 2001, the Board granted the Advocate's motion with regard to the issue of merger savings, directing VNJ to supplement its filing, but denied the motion with regard to the issues of local service offerings in other jurisdictions, cost of service studies for POTS, impact of the proposed Plan on customers and competitors, Lifeline, Access New Jersey, service quality standards, earnings data, universal service, and duration of the Plan. With regard to AT&T's cross-petition, the Board denied VNJ's

motion to dismiss the AT&T cross-petition and rejected Sprint's recommendation for a separate docket. The Board concluded that structural separation is a relevant issue in this proceeding.¹⁰ In response to the Advocate's letter request dated June 22, 2001, Commissioner Butler ruled that the Advocate may file supplemental testimony on structural separation and other competitive safeguard issues no later than August 3, 2001.

While the Board was considering these motions, at its May 8, 2001 agenda meeting, and pursuant to the December 22, 2000 Order, the Board directed Staff to prepare and publish a Request for Proposal (RFP) to obtain the services of a consulting firm to perform a comprehensive review of the financial integrity of VNJ. The intent of the review was to provide the Board with an assessment of VNJ's financial integrity in order to assist the Board in evaluating VNJ's PAR-2 proposal, and to quantify the savings, if any, resulting from the mergers of Bell Atlantic Corporation with NYNEX Corporation (NYNEX) and GTE Corporation (GTE). The Board also intended that the results of the review would be used to determine if VNJ's practices regarding financial reporting, merger costs and savings, and affiliate costs comply with applicable law, Board rules, Board Orders and procedures. If the review demonstrated a lack of compliance with the Board's requirements, the consultant's report was also expected to enable the Board to direct any necessary remedial efforts to bring VNJ into compliance.¹¹

On May 15, 2001, testimony largely in opposition to VNJ's direct testimony was filed by the Advocate and by AT&T, MCI WorldCom (WorldCom), and the New Jersey Cable Telecommunications Association (NJCTA). The New Jersey School Boards Association (NJSBA), and the New Jersey Department of Education (DOE) also filed testimony limited to VNJ's proposed enhancement of the ANJ program. The Advocate presented the testimony of the following six witnesses: Ms. Barbara R. Alexander; Mr. Roger D. Colton; Mr. James A. Rothschild;¹² Dr. Lee L. Selwyn; Mr. Thomas H. Weiss; and Mr. Douglass S. Williams. AT&T also introduced testimony from six witnesses: Mr. Michael R. Baranowski; Mr. Thomas J. Cosgrove; Mr. Robert J. Kirchberger; Dr. William H. Lehr; Mr. Michael J. Morrissey; and Mr. E. Christopher Nurse. Other witnesses that submitted testimony were: Mr. Merwin R. Sands on behalf of WorldCom; Ms. Kathleen M. H. Wallman on behalf of NJCTA; Mr. Michael Miller on

¹⁰ See Order of Approval, I/M/O Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing, Docket No. TO01020095 (June 20, 2001).

¹¹ See Order Acknowledging Receipt of Report, Docket No. TO01020095 (November 9, 2001) at 1.

¹² Mr. Rothschild subsequently filed Corrected Direct Testimony dated November 8, 2001.

behalf of NJSBA and Dr. Jeffrey V. Osowski on behalf of the DOE. Although it did not file any witness testimony, XO New Jersey, Inc. (XO) participated as a party to the proceeding.

By letter dated June 8, 2001, VNJ moved to strike portions of the May 15, 2001 testimonies of AT&T witness Michael Baranowski and WorldCom witness Merwyn Sands. VNJ asserted that these testimonies should be stricken because they address issues litigated in other proceedings, namely, the Board's then ongoing Unbundled Network Element (UNE) proceeding,¹³ its prior UNE proceeding, and the then ongoing Operations Support Systems (OSS) proceedings.¹⁴ Commissioner Frederick F. Butler, presiding officer during this proceeding, denied VNJ's motion with regard to the Baranowski and Sands testimony related to UNEs, UNE combinations and service reclassification, but granted the motion with respect to testimony regarding VNJ's OSS.¹⁵

On June 15, 2001, most of the witnesses who had submitted testimony in support of VNJ's February 15 Petition filed rebuttal testimony, responding to the testimony of other parties filed on May 15, 2001.¹⁶ In addition, on June 15, 2001, VNJ filed rebuttal testimony of the panel of Dr. Kenneth Gordon and Mr. C. Lincoln Hoewing, and by Dr. James H. Vander Weide relating to certain issues that it had not initially introduced in connection with its Petition, but that had been raised in the opposition testimony filed on May 15, 2001.¹⁷ This rebuttal testimony concerned VNJ's cost of capital (Dr. James Vander Weide), responsive to RPA testimony, and the issue of structural separation (Gordon and Hoewing), which had been introduced into the case by AT&T by virtue of its February 27, 2001 answer and cross-petition and its May 15, 2001 filing. The Board also permitted limited additional testimony by witnesses on behalf of the Advocate, the DOE, the NJSBA, and VNJ.¹⁸

¹³ I/M/O the Board's Review of the Unbundled Network Elements Rates, Terms and Conditions of Verizon New Jersey Inc., Docket No. TO00060356.

¹⁴ In re the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket No. TX98010010.

¹⁵ See Ruling of Commissioner Frederick F. Butler dated August 2001.

¹⁶ Mr. Bone did not file rebuttal testimony. Additionally, Mr. Joseph Gansert replaced Ms. Matt on the Matt, Meacham, Prosini and Taylor Panel and Ms. Bernadette Phillips replaced Ms. Thoms.

¹⁷ The panel of Dr. Gordon and Mr. Hoewing filed additional Rebuttal Testimony on August 17, 2001 to respond to the economic and policy issues related to structural separation raised in the testimonies of Dr. Selwyn and Mr. Scott Hempling filed August 3, 2001 on behalf of the Advocate.

¹⁸ The Advocate supplemented the testimonies of Ms. Alexander (September 13, 2001), Mr. Rothschild (August 24, 2001), and Dr. Selwyn (June 14, 2001). The DOE supplemented the testimony of Dr. Osowski (September 11, 2001). The NJSBA filed testimony of Dr. Howard S. Tilis (July 31, 2001). VNJ supplemented the testimonies of Mr. Hall (April 3, 2001 and September 4, 2001) and Ms. Phillips (October 1, 2001) and the panel testimonies of Messrs. Shooshan, and Weber and Dr. Taylor (July 12, 2001) and of Mr. West and Dr. Taylor (July 2, 2001 and September 25, 2001).

In addition, on June 20, 2001, the Board retained Liberty Consulting Group (Liberty) to perform the comprehensive review of VNJ's financial integrity ordered by the Board in its December 22, 2000 Order, and pursuant to the May 8, 2001 RFP. On October 23, 2001, Liberty submitted a final comprehensive report to the Board. Thereafter, on November 9, 2001, the Board issued an Order accepting Liberty's report.

Throughout the proceeding the parties engaged in extensive discovery, and motion practice related to discovery. The Board conducted public evidentiary hearings, with Commissioner Butler presiding, on eleven separate days between July 30, 2001 and October 15, 2001.¹⁹ Throughout the course of those hearings, which generated more than two thousand transcript pages, nearly 200 exhibits were admitted into evidence. The Board also held a total of three public hearings in this matter, two on August 13, 2001 in Newark and Trenton, and another on October 1, 2001 in Millville. On January 9, 2002, the parties submitted their initial post-hearing briefs, and, on January 23, 2002, submitted their reply briefs. Initial and reply briefs were filed by VNJ, the RPA, AT&T, WorldCom, NJCTA, NJSBA, and XO.²⁰

Prior to the initial briefing, at its December 19, 2001 agenda meeting, after requesting and receiving written comments from the interested parties, the Board extended PAR-1 for an additional 90-day period, that is, from January 1, 2002 to March 31, 2002, memorializing this

¹⁹ Citations herein to the transcripts of the hearings shall be to the volume followed by page numbers, as follows:

<u>Hearing Date</u>	<u>Volume</u>
7/30/01	1T
8/2/01	2T
8/8/01	3T
8/30/01	4T
8/31/01	5T
9/6/01	6T
9/7/01	7T
9/10/01	8T
9/24/01	9T
10/5/01	10T
10/15/01	11T

Thus, for example, "2T310-312" shall refer to the transcript of August 2, 2001, pages 310 through 312.

²⁰ Citations herein to the parties' briefs shall be as follows:

<u>Party</u>	<u>Citation to Initial/Reply Brief</u>
VNJ	VNJb/VNJrb
RPA	RPAb/RPArb
AT&T	AT&Tb/AT&Trb
WorldCom	WCb/WCrb
NJCTA	CTAb/CTArb
NJSBA	SBAb/SBArb
XO	XOb/XOrb

decision by Board Order dated January 2, 2002.²¹ On March 27, 2002, after again requesting and receiving written comments from the interested parties, the Board extended PAR-1 for an additional 90-day period, that is, from April 1, 2002 to June 30, 2002.²²

After careful review and consideration of the record, the Board announced its decision in this matter at its June 19, 2002 agenda meeting, at which time it voted to approve VNJ's New Plan, effective July 1, 2002, with modifications. In doing so, the Board found that the New Plan, as modified, satisfies the eight statutory criteria governing alternative regulation plans as provided for in N.J.S.A. 48:2-21.18(a). The Board sets forth in detail its determinations regarding each of the eight criteria in Section III of this Order.

The Board also decided on June 19, 2002 to (1) grant with modifications VNJ's business service reclassification request and, accordingly, reclassified as competitive all business services provided to business customers with five or more lines or line equivalents and (2) for business services provided to business customers with between two and four lines, to authorize VNJ to adjust rates by 10% per year for all non-competitive services, except the basic line rate. The Board sets forth its determination regarding the reclassification in detail in Section V of this Order.

By letter dated June 21, 2002, the Board directed VNJ to file a plan modified in accordance with the Board's June 19, 2002 agenda meeting decision, noting that by filing such a modified plan, VNJ would be deemed to have consented to all modifications set forth in the Board's June 19, 2002 decision. By letter dated June 27, 2002 (Confirmation Letter), and an attached Modified Plan, VNJ provided confirmation of its acceptance of those modifications as interpreted and understood by VNJ.

III. DISCUSSION AND ANALYSIS – PAR-2

As an initial matter, the Board will consider a motion made by AT&T on February 14, 2002 and supported by the Advocate to admit into evidence supplemental testimony proffered by AT&T

²¹Order of Extension, I/M/O The Application of Verizon-New Jersey, Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-line Rate Regulated Business Services as Competitive Services, and Compliance Filing, Docket No. TO01020095 (January 2, 2002), at 4.

²²Order of Extension, I/M/O The Application of Verizon-New Jersey, Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-line Rate Regulated Business Services as Competitive Services, and Compliance Filing, Docket No. TO01020095 (March 27, 2002), at 3.

that purportedly demonstrates, through a rerunning of VNJ's Residential Basic Exchange Service (RBES) cost model using inputs approved by the Board in the recent generic UNE proceeding, that VNJ's RBES costs are substantially lower than VNJ's cost study shows them to be. Alternatively, AT&T asked that the Board direct VNJ to rerun its cost model using the Board's recently approved UNE cost factors. AT&T's proffered testimony suggests that VNJ's RBES, instead of being subsidized by VNJ's other services, including access services, provides a contribution to VNJ's bottom line by being priced above cost.

In opposition to the motion, VNJ argued that the purpose of the subsidy analysis was to permit the Board to consider pricing issues with respect to retail services. The Company explained that TELRIC cost study assumptions or other wholesale studies and methodologies, such as those utilized in the UNE proceeding, are not appropriate for retail costs and pricing purposes for which VNJ submitted a subsidy study in this proceeding.

The Board disagrees with AT&T's contention that similar inputs must be used for both wholesale and retail services. Wholesale services focus on the provision of UNEs to other carriers and require the application of strict standards promulgated by the FCC that deviate from other costing methodologies used to set rates for retail customers. The Board, therefore, agrees with VNJ that the TELRIC inputs focusing on wholesale services may differ from those used for retail services. The Board also believes that a subsidy analysis for a service such as Residential Basic Exchange Service requires the examination of VNJ's actual costs to provide this service.

While this methodology does not preclude the Board from adjusting the inputs and data to account for inefficient costs and investments, it does not explicitly require forward-looking assumptions that center on least cost alternatives or a hypothetical network. In the UNE proceeding, the Board made substantial changes to VNJ's UNE cost model, all of which were in response to the FCC-required TELRIC least cost alternatives and/or hypothetical network considerations.

Accordingly, the Board DENIES AT&T's motion to supplement the record with additional cost study information purportedly reflecting cost inputs modified in the UNE proceeding, or, in the alternative, to require that VNJ rerun its RBES cost model to reflect those inputs.

A. Will the New Plan Ensure the Affordability of Protected Telephone Services?

In the Telecommunications Act of 1992, the Legislature found and declared that it is the policy of the State to, among other things, maintain universal telecommunications service at affordable rates. N.J.S.A. 48:2-21.16(a)(1). Accordingly, pursuant to N.J.S.A. 48:2-21.18(a)(1), to be approved by the Board, a plan for an alternative form of regulation must ensure the affordability of protected telephone services. The Act defines protected services as:

any of the following telecommunications services provided by local exchange telecommunications company, unless the [B]oard determines, after notice and hearing, that any of these services is competitive or should no longer be a protected telephone service; telecommunications services provided to business or residential customers for the purpose of completing local calls; touch-tone service or similar service; access services other than those services that the [B]oard has previously found to be competitive; toll service provided by a local exchange telecommunications company; and the ordering, installation and restoration of these services.

[N.J.S.A. 48:2-21.17]²³

1. VNJ Position

According to VNJ, the rates charged for protected services under PAR-2 are the same rates in effect under PAR-1. VNJb at 14. VNJ further stated that since the Board's approval of PAR-1 in 1993, there have been only minimal increases in the Company's intrastate regulated rates, all with Board review and approval. VNJb at 14-15. VNJ argued that its rates for residential basic exchange service (RBES) are set well below cost and, as a result, the Company has the lowest 1FR (flat rate residence service) RBES rates of any former Bell Operating Company (BOC). Id. at 15; VNJ-10 at 10.²⁴ In determining whether these rates satisfy the "affordability" criterion of N.J.S.A. 48:2-21.18a(1), VNJ pointed out that other price indicators have risen steadily during this period, noting that even when taking into account the Touch-Tone and federal subscriber line charge (SLC) that RBES customers pay, RBES rates have risen slower than increases in social security income, the consumer price index, the cost of food, and postal rates.²⁵ VNJ

²³ Toll services provided by the LEC were declared competitive by the Board in 1997.

²⁴ "VNJ-10 at 10" refers to VNJ Exhibit 10 at page 10. All references to evidentiary materials shall use this format.

²⁵ VNJb at 15, quoting from VNJ-10 at 10.

further argued that “affordability” is also a function of customers’ ability to pay, and that when New Jersey per capita income, which is the third highest in the nation, is taken into account, “VNJ’s steady rates for protected services” have become more affordable during the operation of the PAR-1. Ibid. VNJ noted that while New Jersey’s per capita income more than doubled from 1985’s \$17,652 to 1999’s \$35,551, VNJ’s highest rate for RBES in 1985 was \$8.19, and, today, that rate remains \$8.19, a zero percent increase over a more than fifteen year span. ²⁶

VNJ further alleged that its PAR-2 proposal assures the affordability of protected telephone services to elderly and low-income customers through expansion and enhancement of the VNJ Link-Up America and Lifeline Service programs.²⁷ As VNJ explained, the Lifeline assistance program, which provides monthly credits to eligible low-income customers who subscribe to basic exchange service, will be expanded under PAR-2 to include all Medicaid or Supplemental Security Income (SSI) recipients, as well as senior citizens meeting a specified household income threshold. VNJb at 17-18. Additionally, the PAR-2 proposed by VNJ contains a “self-certification” mechanism, which Verizon contended will facilitate the enrollment of a broader base of low-income customers and senior citizens. Id. at 18; 4T888. VNJ also proposed an expanded outreach program to increase the level of customer awareness of the availability of Lifeline service, and noted that the above-described expanded eligibility requirements and self-certification procedures will also apply, under PAR-2, to Link-Up America, a federally funded program that provides a 50% discount on service connection charges and allows the remaining service connection charges to be paid in 12 monthly installments. Id. at 18.

VNJ also alleged that its proposed enhancements to expand and extend its ANJ program ensure that schools and libraries in the state will have access to advanced telecommunications services at affordable rates. Specifically, VNJ proposed to make available \$20 million for equipment to be purchased for ANJ as well as an extension of the discounted ANJ rates through 2004. VNJb at 32; VNJrb at 34.²⁸ Moreover, VNJ noted that its ANJ enhancements are worth considerably more than \$20 million to customers, when the value of savings over the extended term of the commitment, and the availability of both ANJ rates and federal Universal Service Fund (USF) discounts are taken into account. VNJrb at 41. According to VNJ, the

²⁶ VNJb at 15-16; VNJ-10 at 11-12.

²⁷ See generally, VNJb at 17-20.

²⁸ ANJ contracts entered into in 2004 will effectively extend ANJ discounted rates for three (3) additional years, i.e., until 2007. See also VNJ-10 at 24-25 for a summary of VNJ’s proposed enhancements to expand and extend its ANJ program.

Company will further enhance savings to schools and libraries under ANJ through the application of the federal USF discount to the ANJ rates. By way of example, the company explained that a school district eligible for an 80% federal USF discount subscribing to ATM 1.5 service at an ANJ rate at \$400 per month would reduce its monthly cost to \$80. VNJ further noted that the school or library receiving ANJ rates would also be eligible to receive ANJ equipment at no cost. Id. at 41-42.

VNJ alleged that AT&T's arguments that VNJ could not demonstrate that protected services will remain affordable indefinitely due to the lack of a defined Plan term is a "red herring," in light of the protections afforded by continued Board review and oversight of any proposed rate increases. VNJrb at 31. Similarly, VNJ disputed the Advocate's and WorldCom's concerns that PAR-2 will enable VNJ to freely raise residential rates at any time and, in turn, argued that the Advocate and WorldCom ignore VNJ's acknowledgment that protected services will continue to be regulated, and that all rate changes will be subject to Board review. Id. at 32. According to VNJ, in the event Verizon were to seek authorization to change its rates, "the Board will have ample opportunity, at the appropriate time, to ensure that any basic rate increases would meet the affordability test." VNJb at 17; VNJrb at 32. In response to the Advocate's contention that VNJ's affordability analysis, based in part on an analysis of New Jersey's per capita income, fails to consider persons or households that deviate from the average, VNJ asserted that the enhanced Lifeline program already addresses the needs of low-income and elderly households. VNJb at 16; VNJ-12 at 28. Moreover, according to VNJ, the Advocate has offered no data that would indicate that protected services are not affordable, or that the distribution of income is so skewed that only New Jersey residents with high incomes can afford VNJ's protected services. Ibid.

Additionally, VNJ challenged the Advocate's contention that PAR-2 does not ensure the affordability of protected telephone services because it does not include a provision for automatic rate adjustments, arguing that (1) there is no legal requirement that a plan of alternative regulation include an automatic rate adjustment provision; (2) the Board-approved rate adjustment provision previously in effect under PAR-1 (not included in PAR-2) permitted annual automatic rate *increases* as well as decreases; and (3) formula-based rate adjustment mechanisms are not necessary to assure the continuation of affordable and just and reasonable rates. VNJb at 16-17. VNJ also argued that the Advocate was a signatory party to the ANJ Stipulation that modified PAR-1 by, inter alia, eliminating the rate adjustment mechanism from

PAR-1, while never arguing that the elimination of the rate adjustment mechanism affected the justness and reasonableness of the rates. Ibid.

VNJ disagreed with the Advocate's call for larger Lifeline discounts, stating that such discounts were unnecessary and could result in some customers receiving free RBES. VNJb at 18; VNJrb at 37-38. Likewise, VNJ opposed the Advocate's recommendation that the Board should require automatic enrollment in Lifeline, noting, among other things that, as previously stated by the Board, such enrollment "would force customers to accept a limitation on certain desired vertical features."²⁹ According to VNJ, it is more appropriate to leave the choice of service to the customer, who under the proposed PAR-2 will have the option of self-certifying Lifeline eligibility and forgoing vertical services (other than privacy-related vertical services) or choosing a non-discounted RBES with no vertical service restrictions. Id. at 19-20. Additionally, VNJ asserted that the Advocate proposal ignores fundamental privacy concerns regarding the involuntary disclosure of the identity of recipients of government benefits that would be necessitated by automatic enrollment. Id. at 19.

VNJ also opposed the Advocate's recommendation that the financial commitment to the ANJ program be increased to \$47 million annually, arguing that it erroneously relies on the testimony of DOE witness Osowski who, according to VNJ, actually advocated a total of \$50 million over a four-year period, or only \$12.5 million per year. VNJrb at 42. VNJ further asserted that increased funding was unnecessary because the DOE acknowledged that no school in New Jersey has ever been denied ANJ funds on the grounds that such funds were not available. Ibid.³⁰ Finally, VNJ argued that its proposal to extend ANJ rates through 2007 will result in savings in addition to the \$20 million commitment. VNJrb 43.

With respect to the Advocate's call for the establishment of a State universal service fund, VNJ argued that such a fund would be duplicative of Federal Communications Commission (FCC) efforts in this regard, as well as an extremely costly tax on New Jersey consumers. VNJrb at 35. Instead, VNJ recommended that the Board continue its policy of providing universal service assistance in a targeted fashion through the Lifeline and ANJ programs. Id. at 36. VNJ also

²⁹ VNJb at 18-19, quoting from the Board's decision in I/M/O the Board's Inquiry Bell Atlantic-New Jersey, Inc.'s Progress and Compliance with Opportunity New Jersey, as Accelerated by Order dated June 10, 1997, BPU Docket No. TX99020050 (March 30, 2001) at 10.

³⁰ DOE testimony differs somewhat from this assertion. DOE witness Julia Stapleton, Director of the DOE's Office of Educational Technology, testified that she was not aware of any New Jersey school districts that have been "unable" to enter into ANJ contracts because of inadequate CPE funding. 10T1969.

assailed the Advocate's proposal that a state USF be established as procedurally out of place and best left to a generic proceeding. Ibid.

2. Advocate Position

The Advocate argued that the absence of a firm cap on rates (which was included in PAR-1 for certain services) means that PAR-2 fails to “ensure the affordability of protected services” as required by N.J.S.A. 48:2-21.18(a)(1). RPAb at 22-25, 51. According to the Advocate, elimination of the rate cap established in PAR-1 would place affordable rates in jeopardy by allowing VNJ to seek a rate increase immediately after Board approval of the New Plan. Id. at 22-23. The Advocate further argued that reclassification of all multi-line business services, as requested by VNJ in this proceeding, would permit rate increases in all other services that remain rate regulated as services are shifted out from under the cap. Id. at 23. The Advocate argued the Board must consider whether competition exists in the local exchange marketplace sufficient to constrain VNJ price increases. Ibid. In support of this proposition, the Advocate cited a decision in an alternative regulation proceeding before the Maine Public Utilities Commission, which extended an existing cap on basic local rates for an additional five years, after having evaluated the degree to which effective competition existed in the state.³¹ In addition, the Advocate contended that a rate cap follows naturally from the State's express Legislative policy of maintaining affordable rates, and abandonment of a rate cap would be a “fundamental departure” from the Board's PAR-1 approach to rates. Id. at 24. The Advocate also argued that capping residential rates will promote a rational price structure, because as its witness Dr. Selwyn testified, residential service revenues subsidize other VNJ services.³² The Advocate also cited to the public hearing testimony of Marilyn Askin, President, AARP New Jersey, and Assemblyman Reed Gusciora, as support for a five (5) year rate cap.³³ In addition the Advocate countered VNJ's reliance on per capita income statistics as support for its claim of affordability. The Advocate argued that the use of such statistics presents an “inaccurate affordability picture” because it doesn't view income data with sufficient granularity. RPAb 74. Citing to the FCC's Universal Service Order, the Advocate noted the FCC's rejection of the per

³¹ Id. at 23-24, citing Order, Investigation into Verizon Maine's Alternative Form of Regulation, Docket No. 99-851 (Part 2) (June 25, 2001) at 4.

³² Id. at 24, referencing RPA -20A at 46-62.

³³ See T81:7-10 (August 13, 2001) and T35:24-36 (April 18, 2001).

capita income approach to affordability. Ibid.³⁴ Quoting from the Universal Service Order, the Advocate stated that “... such a standard would tend to overestimate the price at which services are affordable when applied to a service area where income level is significantly below the ... median”³⁵ The Advocate concluded that VNJ’s per capita income statistics ignore the possibility that while residential telephone service has become more affordable for wealthier consumers, it has become less so for the poor. Id. at 74-75.

In order to compensate for what it considers to be a “relative increase in the cost burden of residential service to the poorest New Jersey consumers,” the Advocate urged the Board to implement a set of universal service mechanisms previously recommended by the Advocate in a number of proceedings dating back to 1996. Id. at 75. Specifically, the Advocate recommended that the Board establish an independently administered State USF, applicable to all telecommunications carriers (not just VNJ), “to ensure that low-income residents, schools and libraries, and residents in high cost areas receive affordable intrastate telecommunications and information services.” Id. at 76. According to the Advocate, funding for the State USF should be paid for by each telecommunications carrier as a percentage of its gross intrastate revenues from all intrastate telecommunications services. Id. at 77.

In addition to establishing an independent State USF, the Advocate also urged the Board to order a number of improvements to the current New Jersey Lifeline program, above and beyond those advanced by VNJ. Id. at 85-88. With regard to the level of benefits, the Advocate took the position that all New Jersey consumers that qualify for the Lifeline program should be able to gain the full benefit of federal Lifeline assistance, i.e., \$10.50 per month. Id. at 86. As to eligibility, the Advocate argued that the applicable standards should be broadened to include all households with income at or below 175% of the federal poverty level. Id. at 86-87. In addition, the Advocate recommended a number of affirmative steps to drive up the enrollment level of the Lifeline program, including an automatic enrollment feature. Id. at 88-89.

The Advocate also called upon the Board to ensure (1) that schools and libraries throughout New Jersey have access to advanced telecommunications services and equipment, (2) that programs “similar to” VNJ’s ANJ should be created to service schools and libraries located

³⁴ See WM/O Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (hereinafter, Universal Service Order) (May 8, 1997) at ¶¶110-126.

³⁵ Id. at 74; Universal Service Order at ¶115.

outside of VNJ's service territory; and (3) that competitive carriers should be afforded the opportunity to provide discounted services to schools and libraries under such programs through the establishment of a State USF. Id. at 79-83. The Advocate also contended that VNJ's proposal to extend ANJ and invest \$20 million for ANJ equipment is insufficient. Id. at 83. With respect to VNJ's ANJ program, the Advocate specifically recommended an annual financial commitment of \$47 million, the maintenance of educational discounts for all services and equipment, the extension of discounts to all advanced services, including DSL, the pricing of all services on the basis of residential not business tariffs, and no ANJ termination date. Id. at 83-84.

3. AT&T Position

AT&T argued that VNJ cannot establish that its protected services will remain affordable, even if affordable today, because PAR-2 as proposed by VNJ does not expire by its own terms and appears to be of indefinite length, and because VNJ reserves the right at any time to modify PAR-2, request approval of a new plan, or request rate increases. AT&Tb at 52-53. Citing the PAR-1 Order at 27, AT&T asserted that VNJ must demonstrate compliance with the statutory criteria over the entire life of the plan, and that this cannot be done where the plan has no specific end date. Id. at 53; AT&Trb at 42. AT&T contended that PAR-2 will not ensure the affordability of protected services unless it is modified to include the establishment of a definite expiration date, specific standards for modification and an ongoing requirement to offer a protected service, i.e., basic Plain Old Telephone Service on a stand-alone basis for all customers, including multi-line business customers. Id. at 53-54; AT&Trb at 41-42.

AT&T raised two arguments to support its contention that VNJ has not demonstrated affordability, over the entire duration of PAR-2, of the protected multi-line business local exchange services that may be reclassified as competitive and thus not subject to regulation of rates. Id. at 53. First, according to AT&T, there is insufficient competition to support reclassification, much less to ensure the affordability of the rates of the protected services used by all multi-line business customers. Ibid. Second, according to AT&T, PAR-2 holds the "potential for the elimination of a protected service option, i.e., basic stand-alone [POTS], for multi-line business customers." Ibid. AT&T argued that VNJ could affect the affordability of rates because, according to AT&T, once local business services are reclassified, VNJ "may force a small 1MB business customer with only two POTS lines to subscribe to VNJ toll and other services in order to receive the POTS service." Ibid. AT&T contended that "when

customers must pay for services they do not need or want in order to receive a protected service, it can hardly be said that the affordability of a protected service is ensured.” Ibid. AT&T also asserted that VNJ’s failure to “commit to a stand alone [POTS] business service violates” that portion of the Board’s December 22, 2000 Order directing VNJ to propose recommendations “as to ‘basic service options in addition to POTS.’”³⁶

4. WorldCom Position

While not addressing N.J.S.A. 48:2-21.18(a)(1) directly, WorldCom did assert that VNJ’s proposed PAR-2 does not offer RBES and other rate regulated services the same protections approved by the Board in the PAR-1 Order. WCb at 3-4. WorldCom noted that the proposed Plan eliminates a specific PAR-2 termination date and allows VNJ to file for a rate increase or a new plan with rate increases for regulated services at anytime. Id. at 3. WorldCom also contended that the proposed PAR-2 removes the rate cap on protected services, and thus eliminates rate stability for rate regulated services. Id. at 4. WorldCom also pointed to the proposed PAR-2 removal of the protections and safeguards governing revenue neutral rate changes that were adopted by the Board in the original PAR-1. Ibid.

5. Positions of Other Parties

The New Jersey School Boards Association noted that VNJ’s Access New Jersey program benefits New Jersey’s school districts and students by providing what NJDOE witness, Dr. Jeffrey Osowski, described as the “[a]ffordable access to technology and telecommunications services for every school and library in New Jersey ... essential for ensuring that New Jersey’s students can succeed in the increasingly technological world marketplace.”³⁷ Dr. Osowski further testified that

[a]s schools and libraries in New Jersey take advantage of the affordable rates provided by ANJ, the inequalities [in access to technology] stop at the schoolhouse door and at the front steps of the library.

[DOE-1 at 4; SBAb at 2].

³⁶ Id. at 53-54, quoting from the December 22, 2000 Order at 6.

³⁷ Id. at 1-2, quoting from DOE-1 at 3.

The DOE, with the support of NJSBA, urged the Board not only to continue ANJ through the year 2010, but also to expand and enhance it in order that ANJ continue to serve the present and future needs of the State's schools and libraries. DOE-1 at 10-12; SBAb at 2-3; SBArb at 1-2.

6. Discussion

After careful review of the record and the arguments of the parties, the Board FINDS that PAR-2, as modified herein, will ensure the affordability of rates for protected telephone services as required by N.J.S.A. 48:2-21.18(a)(1). The Board considers persuasive VNJ's arguments in this respect, particularly the fact that under PAR-2, the rates to be charged for protected services are the same rates already in effect today. Many of these rates were established by the Board in 1985 and found to be affordable by the Board in its 1993 PAR-1 Order, which was affirmed by the Appellate Division.³⁸ It is undisputed that rates for basic residential service in New Jersey have not increased since 1985, that those rates are among the lowest in the nation³⁹, and that PAR-2 does not provide for any residential rate increases. Additionally, the Board concurs with VNJ's assessment that protected telecommunications services, with the exception of certain business services, will continue to be fully regulated by the Board under PAR-2, and that any potential future changes in the rates for those services will continue to be subject to Board review and approval. Moreover, because of the enhanced Lifeline program that we approve herein, the needs of low-income and elderly households are clearly being addressed, thereby assuring affordable service to all customers in need throughout the State. In addition, VNJ's ANJ program, extended and expanded by this Order, will continue to provide affordable access to telecommunications technology to the State's schools and libraries.⁴⁰

The Board believes that, in assessing satisfaction of the "affordability" requirement, it is entirely relevant to inquire into the behavior of other price indicators. Accordingly, we find persuasive the un rebutted assertion that RBES rates have remained essentially flat under the existing PAR-1, while other price indicators such as Social Security income, the consumer price index, the

³⁸ See In re Application of New Jersey Bell Telephone Company, *supra*.

³⁹ See VNJb at 15; VNJ-10 at 9.

⁴⁰ As discussed *infra*, where the Board addresses the Bell Atlantic-NYNEX and Bell Atlantic-GTE mergers, under the circumstances of the original plan, an appropriate balance can be achieved between reasonable rates and proper incentives to innovate if a portion of the merger savings achieved by Verizon during the plan be made available to customers in the form of the increased commitments by Verizon to the Board approved Lifeline and Access New Jersey programs.

cost of food, and postal rates have risen steadily. We also find persuasive VNJ's contention that, after considering New Jersey per capita income, rates for protected services have become more affordable over time. See VNJb at 15-16. The Advocate's argument that the use of the per capita income approach to affordability is misleading because it overlooks areas of the State where the income level is below the median (see RPAb at 73-75) is not persuasive because it overlooks the fact that an enhanced Lifeline program will ensure RBES affordability for New Jersey citizens at the lower income strata. Therefore, the Board FINDS that the rates for protected services under PAR-2 are affordable.

The Board REJECTS the arguments of the Advocate and WorldCom that PAR-2 must contain some form of long-term rate cap, and we decline to impose such a rate cap or rate freeze here. As we have already stated, rates for protected services continue to be subject to Board review and approval. Putting aside as irrelevant the proposed reclassification of multi-line business services, PAR-2 proposes no increase in the rates for protected services. The PAR-2 absence of a rate cap and rate freeze cannot be understood to mean that rates will rise and therefore become non-affordable. If and when asked to in the future, the Board, with the full participation of all interested parties, will then consider the appropriate level of the rates for protected services, keeping fully in mind the requirement that rates for protected services must remain affordable under a plan of alternative regulation. The Company's protected services will continue to be regulated by the Board, and any potential future rate changes will be subject to full Board review, scrutiny and approval. The Board also agrees with VNJ that there is no legal requirement that a plan of alternative regulation include an automatic rate adjustment provision, and accordingly FINDS that such a mechanism is not a prerequisite to ensuring the affordability of protected services.

We also REJECT the arguments of AT&T and WorldCom that PAR-2 must contain a fixed termination date. The purpose of this proceeding is to evaluate PAR-2 in light of the relevant statutory requirements. While an alternative form of regulation "may include, but not be limited to, the use of an index, formula, price caps, or zone of rate freedom," the statute imposes no specific operational requirements. See N.J.S.A. 48:2-21.17. Rather, the Act is clear that the Board in its discretion may approve a proposed plan so long as it satisfies the eight criteria set forth in N.J.S.A. 48:2-21.18. Additionally, while the PAR-1 Order did reference the fact that PAR-1 would be in effect for a fixed term of years, we at no point found that all alternative plans

of regulation, under all circumstances, must contain a similar provision, and decline to impose such a requirement here.

Having reviewed the evidence and arguments of the parties in the record relating to VNJ's assistance programs, we FIND that the Company's expanded and enhanced Lifeline and Link-Up America programs, as modified herein, will provide additional assurances of continued affordability for elderly and low-income customers. As an initial matter, we recognize that the Lifeline program serves the compelling purpose of making local residential service available to people who might not be able to otherwise afford telephone service. However, as noted by the Advocate, at present there are less than 50,000 subscribers in this program, while the record indicates that 400,000 to 500,000 may be eligible.⁴¹ Therefore, we shall enhance the affordability of residential basic exchange service by ordering improvements to the New Jersey Lifeline program in the area of eligibility. While VNJ has proposed improvements to Lifeline, we FIND that the Company's proposal must be modified in order to satisfy the requirements of N.J.S.A. 48:2-21.18(a)(1). We DIRECT that these modifications shall become effective as of March 1, 2003.

The Board supports VNJ's proposed augmentation of Lifeline eligibility under PAR-2 to include persons receiving Medicaid or SSI, as well as the other qualifying New Jersey assistance programs. This proposal represents a substantial expansion of the current Lifeline program, under which an eligible Medicaid recipient must also be receiving SSI benefits in order to meet the eligibility requirements. In addition, the Board concurs with the Company's expansion of the program's eligibility criteria to include low-income senior citizens (65 years of age and older) with household incomes at or below 150% of the federal Poverty Level, including those seniors not participating in one of the eight qualifying New Jersey assistance programs. In rejecting the Advocate's call for Lifeline eligibility for all households with incomes at or below 175% of the federal Poverty Level, we note that the basis of this recommendation is that the Board ordered a similar eligibility level be adopted for GPU Energy's low income, Percentage of Income Payment (PIP) Program.⁴² However, the Advocate has not made the case why the Board's decision set forth in the Energy Interim USF Order should serve as a precedent here. Our decision then

⁴¹ See RPA at 88; RPA-21 at 14-15. VNJ testimony asserts that there are 325,000 "appropriate low-income households" currently targeted by its Lifeline program. There is no dispute in the record as to the number of current Lifeline subscribers. See VNJ-12 at 36-39; VNJrb at 37-40.

⁴² See Interim Order, I/M/O the Establishment of a Universal Service Fund Pursuant to the Electric Discount and Energy Competition Act of 1999, Docket No. EX00020091 (November 21, 2001) (hereinafter, Energy Interim USF Order) at 20.

expressly continued the GPU Energy PIP Program that was born out of a stipulated settlement resolving the merger proceeding initiated when First Energy Corp., an Ohio corporation, sought to acquire Jersey Central Power & Light Company d/b/a GPU Energy.⁴³ The petitioner here, VNJ, has not stipulated to the 175% eligibility level. And nothing in the record relates the need for societal benefits in the energy field in contrast to the telecommunications field.

Accordingly, since we believe that the Company's expanded eligibility criteria, in conjunction with other Lifeline enhancements described below, substantially augment the existing Lifeline assistance program, we REJECT as unnecessary the Advocate's call for a broader approach.

With regard to Lifeline benefits, under the existing Lifeline program customers who qualify for Lifeline service receive free Touch Tone service and a monthly credit equal to \$3.50 plus a credit equal to the federal subscriber line charge (recently increased from \$5.00 to \$6.00) for a total credit of \$9.50. VNJ has proposed to continue offering the same Lifeline benefits under PAR-2. We note that effective in 1998, the FCC expanded the federal Universal Service Fund's Lifeline program by offering states new matching funds. According to an FCC study released in July 2001, states that took steps to qualify for maximum federal matching funds saw telephone penetration for all households rise nearly one percent between 1997 (prior to Lifeline expansion), and 2000, and rise 2.2% for low income households.⁴⁴ On the other hand, the study indicates that "[s]tates that did not take the steps to qualify for full federal matching funds saw no significant improvement in telephone penetration rates." Ibid. New Jersey is among the latter states, providing some Lifeline assistance, but less than enough to qualify for maximum federal support. Id. at 4 and Table 3, p. 8. The study shows that telephone penetration among New Jersey low income households rose 1.1% between 1997 and 2000. Id. at Table 3, p. 8. In contrast, telephone penetration among low income households in New York, a "full assistance" state, increased a statistically significant 4.5% during the same period. Ibid. In light of this persuasive data, we FIND VNJ's proposal to maintain the current level of Lifeline assistance insufficient. Accordingly, we DIRECT that eligible Lifeline customers continue to receive free Touch Tone service as they always have, and receive a monthly credit of up to \$3.50 from VNJ, plus matching federal funding in the form of a \$3.50 credit, plus a monthly credit of \$6.00 (equal to the applicable federal SLC) for a total monthly credit of up to \$13.00, making New Jersey a "full assistance" state. We recognize VNJ's concern that the level of benefits recommended by

⁴³ See Order of Approval, I/M/O the Joint Petition of First Energy Corp. and Jersey Central Power & Light Company, d/b/a GPU Energy, for Approval of a Change in Ownership and Acquisition of Control of a New Jersey Public Utility and Other Relief, Docket No. EM00110870 (October 9, 2001) at 33.

⁴⁴ See RPA-30 (Telephone Penetration by Income by State," Common Carrier Bureau, FCC (July 2001)) at 1-4 and Table 3.

the Advocate that we herein adopt, could result in some customers receiving free RBES, and that the total available credit would actually exceed the total price of basic service for certain customers. However, we FIND that VNJ will be sufficiently protected so long as the credit is limited to one line per Lifeline customer and the actual amount of the credit shall not exceed the customer's cost for Lifeline service. That is, under no circumstances will an eligible customer's support result in the customer's basic residential exchange service bill being less than \$.00.

The Board is keenly aware of New Jersey's low Lifeline participation rate. Less than 50,000 subscribers is an unacceptably low rate for a program that is intended to promote affordable telephone service for our neediest citizens, and that has been in existence since December 1, 1997. By our Order dated March 30, 2001 in Docket No. TX99020050, the Board then stated that it "will not now endorse automatic enrollment in the Lifeline program" because of three (3) issues. First, the Board was aware that those on the Lifeline program could not subscribe to certain optional vertical features not considered essential to telephone service⁴⁵, and did not want to force customers to drop those services against their will in order to enroll in Lifeline. Second, the Board assumed that a small number of Lifeline eligibles might simply choose not to have telephone service. Third, the Board was concerned that open enrollment of Lifeline eligibles would require disclosure of the identities of subscribers receiving benefits under programs administered by the State's Department of Human Services.

Because of the Lifeline program's unacceptable history of low participation, we believe it is necessary to reverse our prior direction and encourage greater participation by eligible consumers through automatic enrollment. Accordingly, in concurrence with the Advocate's recommendation, the Board now endorses automatic Lifeline program enrollment. Automatic enrollment, as provided for herein, will ensure the broadest possible participation in Lifeline, while preserving both the customer's choice and privacy. We REJECT VNJ's proposed "self-certification" mechanism except for senior citizens at 150% of the federal poverty level, as an insufficient and uncertain method of expanding Lifeline enrollment. We DIRECT the Company to institute an automatic enrollment procedure in conjunction with the Board, the Department of Human Services (DHS), the Department of Health and Senior Services (DHSS), the Office of the Attorney General, and the Advocate. Under the automatic enrollment procedure that we herein adopt, VNJ shall obtain from DHS and DHSS every quarter the names and other

⁴⁵ VNJ's Lifeline tariff requires that Lifeline participants not subscribe to any optional services except nonpublished listing, Call Block, Caller ID, Caller ID with Name and Call Trace.

necessary information of recipients of designated government funded assistance and benefit programs administered by DHS and DHSS. VNJ shall then match and enroll those qualified customers in the Lifeline assistance program, beginning in March 2003 for the next month's billing cycle. Respecting VNJ's concerns regarding the privacy of its customers and the concerns of DHS and DHSS regarding the confidentiality of recipient information of government benefit programs, we DIRECT VNJ to enter into a memorandum of understanding with the requisite State agencies regarding access to and use of private recipient/customer information. Additionally, we take notice of VNJ's concerns regarding the preservation of customer choice and, accordingly, DIRECT that VNJ customers who have services other than those permitted under the Lifeline plan shall not be automatically enrolled, but, instead, shall be given an opportunity to elect enrollment. We DIRECT VNJ to notify its customers who are qualified for Lifeline services, but for their current subscription to the prohibited vertical services, that by terminating those services they would be enrolled in the program. Lastly, we support VNJ's proposed expanded outreach program, and DIRECT the Company to also work with outreach programs of the State, consumer groups, and the Advocate to assist in communicating the availability of Lifeline assistance to all eligible persons. VNJ is further DIRECTED to continue to file the monthly Lifeline reports as directed by the Board by our Order dated March 30, 2001 in Docket No. TX99020050.

With respect to VNJ's proposed enhancements to its ANJ program, the Board concurs with the Advocate that the Company should be required to provide greater funds under ANJ than the \$20 million proposed in its initial PAR-2 filing. We therefore DIRECT that VNJ provide \$55 million for communications technology equipment, that will be expanded to include CODECs, over a five-year period, with equal amounts allocated to each year. The technology, all of which shall be provided by VNJ or its affiliates, will serve key needs of the State's educational system and public libraries, as identified and determined by the appropriate State agencies, and may include funds for interactive television training classrooms to the Career Academies and State Police training facilities, and higher education facilities for network integration. Funds that may remain after five years must be available until exhausted. Furthermore, we agree with the Advocate's position that the ANJ program should be continued. Accordingly, we DIRECT VNJ to provide four services to schools and libraries – Frame Relay, Asynchronous Transfer Mode, Integrated Services Digital Network, and Switched Multimegabit Data Services – at the same rates and terms currently in effect under PAR 1. In addition, we approve of VNJ's augmentation of ANJ allowing participating schools and libraries to accept federal Universal Service Fund

subsidies for these services. While we believe that the Company's proposed extension of ANJ rates through 2007 is insufficient, we are also not persuaded by the Advocate's recommendation that ANJ continue indefinitely. Therefore, we believe that three-year contracts for these services should continue to be available until the year 2014. As discussed in more detail below, we REJECT XO's assertion that the ANJ program improperly discriminates against competing carriers. Finally, VNJ is DIRECTED to continue to file monthly reports on the progress of ANJ as directed by our Order dated March 30, 2001 in Docket No. TX99020050.

We note the Advocate's recommendation, also supported by XO, that the Board establish an independently administered State USF applicable to all telecommunications carriers. In this regard, we concur with VNJ that a State USF need not be instituted at this time because the Board's policy of providing subsidies in a highly targeted fashion through the Lifeline and ANJ programs is presently a sufficient means of ensuring that the goals of universal service are met. Notwithstanding our rejection of the Advocate's USF recommendation, the Board notes that several of the Advocate's arguments supporting the creation of such a fund are specifically addressed through other aspects of our decision. For example, the Advocate recommended that low-income residents be afforded a Lifeline benefit of \$10.50, rather than the lesser amount available under PAR-1 and proposed by VNJ under PAR-2. Our decision herein provides for Lifeline benefits in excess of those requested by the Advocate. Our decision also incorporates an automatic enrollment process for the Lifeline program as requested by the Advocate. Finally, our decision satisfies the Advocate's request that VNJ extend and expand its commitments to ANJ.

Finally, we are not persuaded by AT&T's arguments (see AT&Tb at 52-54) that POTS must be made available on a stand-alone basis for all customers, including multi-line business customers, or that VNJ has not demonstrated affordability of the protected multi-line business services that would be reclassified as competitive pursuant to PAR-2. While we address the reclassification of multi-line business services in detail in Section V below, we note our agreement here with VNJ's argument (see VNJb at 32-33) that AT&T has confused the standards governing the Board's review of PAR-2 and its review of VNJ's request for reclassification. The Act is clear that a "protected telephone service" is no longer "protected" after the Board determines that it is competitive under the terms of the Act.⁴⁶ In granting, with

⁴⁶ See N.J.S.A. 48: 2-21.17 in which "[p]rotected telephone services" are defined to mean a number of specifically listed telecommunications services, " unless the [B]oard determines, after notice and hearing, that any of these services is competitive."

modifications, VNJ's request to reclassify multi-line business services as competitive, the Board has found that the affordability of reclassified services will be ensured by the availability of like and substitute services, the numerous competitors present in the market, and low barriers of entry into that market. Similarly, AT&T's concern (AT&Tb at 53-54) that following reclassification, multi-line business customers may be forced to subscribe to other VNJ services in order to receive POTS service, and that such an outcome would undermine affordability, again improperly mixes separate inquiries.

B. Will the New Plan Produce Just and Reasonable Rates for Telecommunications Services?

In the Telecommunications Act of 1992, the Legislature declared that it is the policy of the State to, among other things, "[e]nsure that customers pay only reasonable charges for local exchange telecommunications services..." N.J.S.A. 48:2-21.16(a)(2). Toward this end, the Act permits the Board to approve a plan for an alternative form of regulation if it finds that the plan, among other things, "will produce just and reasonable rates for telecommunications services." N.J.S.A. 48:2-21.18(a)(2).

1. VNJ Position

VNJ argued that because the Board has already found that the Company's rates in effect today under the current plan are just and reasonable, and because these very same rates will be in effect upon the approval of PAR-2, the PAR-2 rates are therefore also just and reasonable. VNJb at 20-23. According to VNJ, rates for RBES continue to be set well below the embedded cost of providing the service, and even when revenue from Touch-Tone and the SLC are included, average RBES rates are more than 20% below incremental costs. Id. at 21. In addition, VNJ pointed out that any change in RBES rates under PAR-2 would require Board review and approval. Ibid. VNJ further argued that the absence of an earnings sharing mechanism in PAR-2 ensures the maintenance of just and reasonable rates to the extent that it provides the Company with the same incentives as an unregulated firm to boost technical efficiency and, in turn, reduce costs.⁴⁷ The Company disagreed with the Advocate's call to "reinitialize" rates at the outset of the new plan based on how well VNJ performed during PAR-1

⁴⁷ Ibid., quoting from VNJ-10 at 5-6.

(including any cost savings achieved by way of mergers), arguing that, by punishing excellent performance under the incentive-plan, such action would be wholly inconsistent with the economic rationale underlying incentive regulation.. Id. at 21-22. VNJ also took issue with opposition to proposed PAR-2 provisions setting rates for new competitive services upon five days notice in advance of a formal determination by the Board that such services are competitive. Id. at 23. VNJ argued that these provisions will afford customers the opportunity to benefit from new services immediately, and preclude competitors from hampering competition by mounting frivolous challenges to the classification of new service offerings and/or planning strategic responses during prolonged proceedings. Ibid., VNJrb at 44. Additionally, VNJ pointed out that the Board will retain its authority to investigate and suspend all aspects of the service if the filing violates a Board rule or is otherwise not in compliance with law. VNJrb at 44.

VNJ challenged assertions by NJCTA and WorldCom that the revenue neutral rate restructuring provisions of PAR-2 could result in rates that are not just and reasonable. See CTA b at 43; WCB at 4, 14. Specifically, VNJ argued that the proposed provision allowing a restructuring filing to take effect without Board approval if the Board fails to act on the filing within 90 days does not preclude the Board from considering whether the resulting rates will continue to be just and reasonable. VNJrb at 45. According to VNJ, streamlined revenue neutral rate restructuring facilitates efficient competition in that “it allows for better alignment of prices with their underlying costs.” Ibid.; VNJ-12 at 45. VNJ also addressed the concerns of AT&T, NJCTA, and the Advocate regarding the Company’s alleged ability to improperly “bundle” services under PAR-2 if the multi-line business reclassification proposal is also granted.⁴⁸ In this case, VNJ argued, the Board will have determined by virtue of its reclassification determination that those customers wishing to purchase only basic local exchange service will be able to do so at market-based rates from participants in the market, which rates, by definition, are just and reasonable. VNJrb at 45-46.

Regarding AT&T’s call for access charge reductions (AT&Tb at 54-60), VNJ asserted that its access rates were determined to be just and reasonable by the Board in the PAR-1 proceeding, and have declined by \$25 million since 1993. VNJrb at 47-48. VNJ noted that AT&T first raised this issue in its initial brief and not in its substantive testimony, thereby denying VNJ the opportunity to respond through written testimony. Id. at 48. VNJ further disputed AT&T’s claim,

⁴⁸ See AT&Tb at 63; CTA b at 47; RPA b at 49.

in support of its call for access reductions, that VNJ's RBES is not subsidized to the same extent that it was when access rates were previously established. Specifically, VNJ argued that AT&T's comparison of a 1997 cost study, which included direct as well as shared/common costs, to a 2001 cost study, which did not include shared/common costs, incorrectly showed a reduction in the RBES subsidy, when, in fact, no reduction had occurred. Id. at 48-49.

VNJ disagreed with AT&T and WorldCom's argument (see AT&Tb at 57; WCb at 2-3) that VNJ should re-run its cost models to reflect the Board's UNE decision, asserting that it is inappropriate to apply the same costing assumptions that the Board adopted in determining wholesale UNE prices in order to estimate the retail service costs of a carrier that is obligated by law to provide service as a carrier of last resort. VNJb at 51. VNJ argues that the TSLRIC study conducted in this proceeding was intended to establish the cost "floor" for a particular company's services, based on expected actual costs that the company will incur in the future. Id. at 50. VNJ contrasted this costing approach with the TELRIC methodology employed in the UNE proceeding, which is intended to generate costs and rates for wholesale UNEs offered by a hypothetical firm utilizing the most efficient new technologies. Ibid.

Lastly, VNJ attacked the Advocate's call for a five-year "rate freeze," charging that the Advocate's recommendation is partly based on a subsidy analysis that is inconsistent with the Board's directives in this proceeding. According to VNJ, the Advocate's demonstration that all services consumed by residential customers, taken as a whole, provide contribution above their incremental cost was inconsistent with the Board's directive that VNJ show the subsidies in its RBES. Id. at 52-55.

2. Advocate Position

The Advocate argued that because VNJ's PAR-2 would eliminate earnings sharing and rate adjustments, and would fail to account for excess earnings and merger savings, the new plan would not produce just and reasonable rates as required by N.J.S.A. 48:2-21.18(2). RPAb at 51. According to the Advocate, earnings sharing and rate adjustments remain necessary because real competition, which would erode excess earnings and force firms like VNJ to pass on cost savings to consumers, does not yet exist to effectively constrain VNJ's market power. Id. at 25-26. The Advocate also recommended that the Board retain the cap on rates imposed under PAR-1, arguing that the rate cap "flows naturally from the express Legislative policy of

maintaining affordable rates, “and promotes a rational price structure. RPAb at 24. The Advocate urged that the Board reaffirm its PAR-1 position and freeze the rates for protected services for the proposed five-year term of PAR-2. Id. at 24-25.

The Advocate also attacked VNJ’s proposed procedures for introducing new services and rate restructuring. The Advocate argued that by “repackaging competitive and non-competitive services as a ‘new service,’ [VNJ] could force customers using protected services into migrating into unregulated ‘new’ services.” Id. at 49. Since changes in the way services are regulated could become effective on five days’ notice, without public input or Board review, the Advocate called for the rejection of VNJ’s proposed procedures, recommending instead that the Board adopt a 30-day notice period for the institution of new services, after which time the Board could approve the new service offering absent any objections. Ibid. The Advocate also opposed provisions in the VNJ plan that would give the Company the ability to seek revenue neutral rate restructuring under procedures that would limit the Board’s review period to 90 days and provide for automatic approval absent Board action. Id. at 49-50. The Advocate argued that the Board should not change its PAR-1 Order rejection of a time limit to review revenue neutral rates restructuring proposals. Id. at 50, citing the PAR-1 Order at 67.

3. AT&T Position

AT&T argued that in order to satisfy the statutory criteria requiring just and reasonable rates, VNJ’s proposed PAR-2 must be modified to: (1) require VNJ to offer a la carte basic local exchange services; (2) reduce access charges to cost-based UNE levels; (3) adopt a definitive termination date of December 31, 2005; (4) establish standards for adjustments to rate-regulated rates as well as requirements for relevant cost data filings; (5) establish an appropriate earnings sharing mechanism; (6) require prior Board approval for revenue neutral rate restructures; and (7) require prior Board approval for new service offerings, whether regulated or competitive. AT&Tb at 63-64. AT&T rejected VNJ’s reliance on the PAR-1 Order for satisfaction of this criterion, arguing that in that case the Board considered and relied upon five provisions (a rate cap formula, earnings sharing, reporting requirements, exogenous events, and depreciation) that are not present in the proposed PAR-2. Id. at 54. AT&T further explained that without a defined term, there is no context for the Board to determine the reasonableness of rates during the entire undefined term of the proposed new plan. Id. at 61.

With respect to its call for access charge reductions, AT&T alleged that VNJ's existing access rates are priced well above cost, resulting in a huge subsidy for basic local exchange service. Id. at 55. According to AT&T, VNJ now receives substantial contribution from all local services, including residential services. Id. at 56-57. AT&T argued that because the access market is not competitive, marketplace pressures do not exist to drive access charges closer to incremental costs. AT&Tb at 58. AT&T asserted that the above cost nature of the charges for this monopoly service allows VNJ to price its toll services at, or just above, what it charges other carriers for exchange access, putting its competitors into a "price squeeze-like" situation. Ibid. As such, AT&T recommended reduction of current access charges to UNE rates, arguing that "access" and "interconnection" describe the same functionality, i.e., that the cost to provide interconnection is the same as the cost to provide that same function when provided as an access arrangement. Id. at 59-60.

AT&T opposed proposed PAR-2 provisions permitting rates for new regulated and/or competitive services to go into effect within five business days of a limited filing, without prior Board approval. Id. at 61-62. AT&T also objected to provisions in PAR-2 allowing for revenue neutral rate restructures for rate regulated services without Board approval in those cases where the Board fails to act on the matter within 90 days. Id. at 62. AT&T also cautioned against provisions in PAR-2 allegedly permitting unlimited rate increases by VNJ for services filed as competitive (and immediately considered competitive), without any prior review of whether the service or rates satisfy the statutory criteria. Ibid.

4. WorldCom Position

WorldCom argued that the proposed PAR-2 will not produce just and reasonable rates for retail or wholesale telecommunications services and that it should be rejected. With respect to retail rates, according to WorldCom, the elimination of a specific Plan termination date, the absence of rate caps or prohibitions on increases for regulated services, and modifications to the revenue neutral rate restructuring provisions in the proposed PAR-2 give VNJ the ability to increase rates at any time without Board approval and remove all assurances that the rates in effect today will remain in effect over the life of the proposed PAR-2. With respect to wholesale rates, WorldCom alleged that Verizon has not yet demonstrated actual, proper, and final implementation of the Board's new UNE rate decision, and that it is unclear whether the new UNE rates even comply with the TELRIC pricing methodology. WCb at 5-7; WCrb at 4-6.

5. Positions of Other Parties

The NJCTA also argued that PAR-2 failed to meet the “just and reasonable” criterion due to the lack of a termination date or rate adjustment mechanism, and VNJ’s failure to commit that it will not charge differing rates for reclassified multi-line customers depending on the presence or absence of competition in an area. CTA_b at 45. According to NJCTA, Verizon improperly relies on the assumption that, because eight years ago the Board stated that the original PAR would assure just and reasonable rates, those rates will always be just and reasonable, barring something outside the price adjustment mechanism. Ibid. NJCTA described doing so as a “leap of faith that the Board should no longer accept. Ibid. NJCTA also argued that there is evidence of cross-subsidization among VNJ’s services, an activity that should not be built into the new regulatory PAR-2 framework. Ibid.

6. Discussion

Having reviewed the record and the arguments of the various parties, the Board FINDS that PAR-2, as modified herein, satisfies the requirements of N.J.S.A. 48:2-21.18(a)(2) that a plan of alternative regulation produce just and reasonable rates for telecommunications services. It is undisputed that the rates proposed by VNJ under PAR-2 are the same as the rates in effect today under PAR-1, and that the rate for RBES has not increased since 1985. It is also undisputed that these rates were previously found by the Board, in connection with its approval of PAR-1, to be just and reasonable. And, as noted above, this PAR-1 determination was affirmed by the Appellate Division in In re Application of New Jersey Bell, supra. Under PAR-2, rate adjustments for regulated services, with the exception of certain multi-line business services as discussed below, will be permitted only upon notice and Board review and determination that such rates are just and reasonable. The Board therefore FINDS that rates under PAR-2, as modified herein, are and will remain just and reasonable. Because any future request for a rate change will be subject to Board review and approval, it is simply illogical to suggest that removal of the rate cap provision of PAR-1 will cause rates in PAR-2 to be not just and reasonable. We therefore REJECT the Advocate’s call for a five-year rate freeze.

Further, as we have noted in the preceding section with respect to ensuring the affordability of protected services, we again FIND that neither a fixed plan termination date, a rate cap, nor a

rate adjustment mechanism are required by the Act or any Board ruling, and that neither the Act nor any Board decision requires an earnings sharing or exogenous events provision. While the Board is not persuaded that a plan of alternative regulation is required by statute or any other prescript to have a fixed term, for the purpose of stability and long-term planning, we DIRECT that VNJ shall not be permitted to file a new plan of alternative regulation any sooner than four years from the adoption of PAR-2. In addition, the Board will retain the right to inquire into VNJ's compliance with PAR-2, and to invoke the exogenous events provision discussed below.

In reference to earnings sharing, the Board agrees with VNJ that the continuation of the provision in PAR-1 requiring earnings sharing, or any similar provision that would require VNJ to forgo a portion of its earnings, would create economic disincentives for VNJ, and we FIND that the approval of a plan without an earnings sharing mechanism is appropriate, and is consistent with most other states that utilize alternative forms of regulation. We therefore DIRECT that PAR-2, as adopted, shall not include an earnings sharing provision.

With regard to the positions taken in opposition to VNJ's proposal that it be permitted to introduce new services on five-business days' notice, the Board is not persuaded by the Company's response to the assertions of the Advocate, AT&T, NJCTA and WorldCom that the five-day period would fail to ensure just and reasonable rates. As a general matter, the Board agrees with VNJ that permitting rates for new and competitive services to be set in a streamlined procedure, in advance of a formal determination by the Board that such services are competitive, will afford customers the timely benefits of new services without enduring unnecessary regulatory delay. However, the Board agrees with the adverse parties that the five-day period suggested by VNJ does not permit sufficient notice to customers, and we so FIND. We therefore DIRECT that under PAR-2, VNJ shall be permitted to introduce new services or withdraw optional services or packages of services on thirty days' notice, without Board approval, and that unless the Board takes affirmative action through a Staff deficiency letter in response to VNJ's proposed introduction or withdrawal, those services shall become effective (or be withdrawn) as set forth in VNJ's notice. We further DIRECT that new services may be introduced or packages of services withdrawn on less than thirty days' notice if the Board transmits a Secretary's letter to VNJ and interested parties to that effect. For services to be considered for a Secretary's letter, we DIRECT VNJ to provide information at the time of filing, to the Board and the Advocate, showing that either: (1) there will be no material harm to customers; (2) there are clear benefits to customers; or (3) a comparable service is already

being provided by VNJ's competitors. We also FIND that prior to withdrawal of new services and packages of services that have been introduced on one-day notice, the services must be available for a minimum of 60 days. We further note that while new services proposed to be competitive will be effective under the guidelines stated above as rate regulated services, they are still subject to Board approval, and in order for those services to be classified as competitive, VNJ must provide evidence demonstrating compliance with N.J.S.A. 48:2-21.19(b). This provision cannot be used to deaverage rates. Finally, with respect to the Advocate's concerns that VNJ might attempt to "repackage" competitive and noncompetitive services into a "new" service, we DIRECT that under PAR-2, this provision does not apply to existing protected services which must continue to be offered on a stand-alone basis. The Board shall retain its authority to investigate and suspend, if necessary, all aspects of a service if the filing violates a Board rule or is otherwise not in compliance with law.

Relating to the various challenges to the provision in PAR-2 permitting VNJ to propose revenue neutral rate restructuring for its rate regulated services, the Board concurs with the criticisms of the Advocate, AT&T, and WorldCom that it is unreasonable for VNJ to require the Board to render a decision within 90 days of such filing. We therefore DIRECT that proposals by VNJ for revenue neutral rate restructuring shall only be authorized upon affirmative Board approval, after the Board has had sufficient time to analyze the filing. We also DIRECT that current limitations regarding the rate regulated services that can be subject to revenue neutral restructuring be eliminated except that such requests cannot be used to geographically deaverage rates.

We are not persuaded by AT&T's call for the Board to mandate a reduction in VNJ's access charges. We FIND insufficient the support in the record offered to sustain AT&T's request. It is important to note that, in PAR-1, the Board found VNJ's access charges to be just and reasonable. See PAR-1 Order at 30-31. And, the record indicates that those rates have declined by \$25 million during the existence of Par-1. See AT&Tb at 56; 5T980. Moreover, the access rates proposed by VNJ under PAR-2 are the same as the rates in effect today under PAR-1. The Company correctly states that, were the Board to respond to AT&T's late request for access charge relief,

substantial evidence and expert testimony would have to have been presented regarding all of [VNJ's] costs and revenues, cross-subsidization of service issues, rate rebalancing issues, [and] the impact of proposed rate changes on the demand for all

services, ... on customers and on the Board's ability to promote Universal Service.

[VNJrb at 48].

The Board believes that the state of the record regarding these issues makes it impossible to consider modifications to access charges at this time. In addition, we are persuaded by VNJ's critique of AT&T's related argument in this regard that the Company's residential basic exchange services are not subsidized to the same extent that they previously were. VNJ has properly noted that the basis of AT&T's argument is flawed because the VNJ 1997 and 2001 cost studies compared by AT&T differ in that VNJ's 2001 study did not include any shared and common costs as did the VNJ 1997 study. VNJrb at 49. Therefore, based on the record developed in this matter, we REJECT AT&T's recommendation that VNJ's access charges be reduced.

As the Board noted earlier with regard to AT&T's motion to supplement the record with cost model reruns reflecting our recent modifications to UNE cost factors, we similarly FIND no merit in the arguments contained in AT&T's and WorldCom's briefs that VNJ should re-run its cost models to reflect the Board's recent UNE decision. We concur with VNJ's position that the respective costing assumptions, i.e., the TELRIC construct used in the UNE case, and the TSLRIC construct used in this proceeding, are simply incompatible. We therefore REJECT the parties' request for a cost model re-run. Similarly, we are not persuaded by WorldCom's attempt to link VNJ's demonstration of "actual, proper, and final implementation" of the Board's UNE rate decision, as well as the clarity of our UNE rates' compliance with the TELRIC pricing methodology, to satisfaction of the requirements of N.J.S.A. 48:2-21.18(a)(2) that a plan of alternative regulation produce just and reasonable rates for telecommunication services. For the reasons already noted, we FIND that VNJ has demonstrated that relevant rates under PAR-2 are just and reasonable, and that the Board's continuing jurisdiction over any potential future efforts by VNJ to raise the rates of telecommunications services will ensure the continuation of rates that are just and reasonable.

C. Will the New Plan Not Unduly or Unreasonably Prejudice or Disadvantage a Customer Class or Providers of Competitive Service?

The third criterion requires VNJ to affirmatively demonstrate that the proposed PAR-2, if adopted, would not prejudice any class of customers or provider of competitive services. N.J.S.A. 48:2-21.18(a)(3).

1. VNJ Position

VNJ contended that, with regard to residential customers, PAR-2 elements, such as its proposed expansion of Lifeline, establish not only that rates are both affordable and just and reasonable, but also that PAR-2 does not unduly or unreasonably prejudice or disadvantage any customer class. VNJb at 23. In addition, VNJ pointed out that PAR-2 expressly requires a demonstration by VNJ that any proposed revenue-neutral rate restructure does not unduly disadvantage one class of customers over another. Ibid.⁴⁹ The Company further argued that PAR-2 maintains current requirements regarding informational tariffs and complies with the reporting requirements for competitive services in conformance with the Board's current rules.⁵⁰ VNJ also cited the following aspects of the New Jersey regulatory environment as evidence that customers, as well as providers of competitive services, will not be disadvantaged under PAR-2: (1) VNJ has lowered access charges by \$25 million; (2) an additional annual reduction in access rates has resulted from a local transport restructure filing; and (3) VNJ has worked with the Board and other service providers through Technical Solution Facilitation Teams (TSFT's) to resolve competitors' concerns, including issues associated with their access to UNE-P and Operational Support Systems (OSS). Id. at 24-25. VNJ also asserted that the 1996 Telecommunications Act, P.L. 104-104, 110 Stat.56, codified in scattered sections of 47 U.S.C. §§151 et seq. (hereinafter, the 1996 Act), contained provisions that ensured that VNJ will not unreasonably prejudice or disadvantage its competitors, and provides for "Board review of the terms and conditions of interconnection agreements for consistency with the public interest."⁵¹

⁴⁹ VNJ's proposed Plan includes the following:

Revenue neutrality in such filings ... will be supported by currently available data and include: ... 3. a description of the impact of the proposed restructure on all affected classes of customers, demonstrating that no other class is unduly advantaged over another.

[VNJ-10 at Exhibit 2, §III.B].

⁵⁰ Id. at 24, citing to the proposed Plan at VNJ-10, §§III.A.2, V.B, and VI. C.

⁵¹ Id. at 25, referring to 47 U.S.C. §251 and 252.

The Company argued that the five business day notice period for new services and the 90 day decision period for revenue neutral restructures, which parties have objected to, are, in fact, prudent measures aimed at reducing regulatory delay and giving customers access to new service offerings as quickly as possible.⁵² VNJ responded to AT&T's and NJCTA's concerns regarding revenue neutral rate restructures, noting that (1) PAR-2 expressly requires that all restructuring filings be supported by data demonstrating their neutral effect on customer classes, and (2) the Board will have an opportunity to review all such filings. VNJrb at 55. VNJ criticized AT&T and WorldCom's allegations of prejudice to competitors as either: (1) calls for the imposition of "safeguards" that are already provided under PAR-2 and/or the Board's existing rules and regulations; or (2) attempts to impose unnecessary burdens on VNJ and the Board. Id. at 55-56. VNJ argued that AT&T's recommended "moratorium" on the competitive treatment of access services is "entirely unnecessary," since the Board will continue to have the authority to evaluate and determine any VNJ request to reclassify access services based on the evidence presented. Id. at 56. VNJ also criticized AT&T's recommendation that the Company reduce access charges to UNE rates as procedurally improper and flawed as to the merits. Ibid.

As to XO's claim that the ANJ program unduly prejudices both providers and consumers, VNJ stated there is no evidence in the record to support this allegation, and also that XO, as well as any other carrier in New Jersey, is free to provide services to schools and libraries at competitive discounted prices using its own facilities or through resale of VNJ services. Id. at 57. According to VNJ, XO ignores the fact that the Board has directed VNJ to make the ANJ program available, thereby, in the Company's opinion, essentially handicapping VNJ relative to its competitors upon whom no ANJ obligation is imposed. Ibid.

2. Advocate Position

The Advocate contended that the rate-related provisions of the proposed VNJ plan would likely prejudice or disadvantage customers and competing providers. RPAb at 51. The Advocate characterized the Company's ability under PAR-2 to reshape its offerings as new services and restructure its rates on what it described as "limited Board review" as "a distinct threat to subscribers." Id. at 49-51; RPArb at 7. In addition, the Advocate argued that PAR-2 would

⁵² VNJb at 25-26, referring to VNJ-12 at 30, and 5T1162-1163.

provide “no workable mechanism to protect competitors,” if VNJ were to use cross-subsidization or discriminatory tactics. RPAb at 51.

3. AT&T Position

AT&T argued that, in order to satisfy this criteria, VNJ must present evidence that its proposed PAR-2, “and the deletion of numerous regulatory constraints from the [current Plan] (or the absence of new constraints) will not prejudice customers or competitive providers.”⁵³ AT&T contends that VNJ has shown no evidence how its plan will avoid discrimination among customer classes. *Ibid.* AT&T asserted that the Company has “simply” asked that the Board “accept, on faith,” that market forces will ensure that the prices in VNJ’s informational tariffs will not prejudice customers. *Ibid.* AT&T expressed concern that unless revenue neutral restructures are subjected to prior approval by the Board, VNJ would have both the incentive and the ability to increase prices for those customers facing the least amount of competition (*i.e.*, residential customers) while decreasing prices for those customers with competitive alternatives (*i.e.*, certain large business customers). *Id.* at 65. AT&T asserted that this very concern is what led the Board to require VNJ in the current PAR-1 to demonstrate that revenue neutral rate restructures do “not unduly prejudice one customer class over another.”⁵⁴ AT&T also charged that PAR-2 prejudices business customers who seek to purchase only basic local exchange, since under PAR-2, coupled with the Company’s reclassification request, “New Jersey multi-line business customers could be forced to take services that they do not want as part of a package in order to obtain VNJ’s basic service.” *Ibid.* AT&T noted, as an example, that business customers that wish to subscribe to a carrier other than VNJ for intraLATA toll services, could be forced to take VNJ’s intraLATA toll service in order to get VNJ’s basic local exchange service. *Ibid.* Thus, AT&T called for the Board to modify PAR-2 to require VNJ to offer an a la carte business exchange (1MB) service. *Id.* at 65-66. AT&T also reiterated its call for a fixed term for PAR-2, as well as standards for Board review of any rate adjustments, arguing that without such Plan modifications the Board “cannot conclude that each customer class will be shielded from prejudicial treatment.”⁵⁵

⁵³ AT&Tb at 64; citing the December 22, 2000 Order at 6.

⁵⁴ *Ibid.*, citing the PAR-1 Order at 67; AT&Trb at 48-49.

⁵⁵ *Id.* at 65; AT&Trb at 48-49.

With respect to competitors, AT&T asserted that by virtue of the 1992 New Jersey Act the Board is authorized to impose safeguards regarding VNJ's provisions of competitive services and to impose safeguard modifications when it approves a Plan in order to avoid prejudice to consumers and competitors.⁵⁶ AT&T noted that the Board previously found that the Plan safeguards under N.J.S.A. 48:2-21.19(e) were related to considerations of undue prejudice to competitors.⁵⁷ According to AT&T, in approving the current Plan, the Board concluded that the combination of safeguards in the Plan, as modified in the PAR-1 Order, were appropriate to prevent prejudice to competitors.⁵⁸

With regard to the proposed Plan, AT&T contended that as long as VNJ is the monopoly provider of bottleneck elements and services, it should be required to maintain the same or similar safeguards adopted under PAR-1, or justify how these safeguards can be eliminated without creating undue disadvantage or prejudice to competitors. Id. at 67. According to AT&T, VNJ has attempted to delete these safeguards in ways that would have a serious detrimental effect on its competitors. Accordingly, AT&T recommended that the Board require the following safeguards: (1) structural separation; (2) an imputation requirement; (3) an unbundling requirement; (4) notice provisions, including a requirement that the notice of new services include the entire filing, rather than a brief description; (5) a moratorium on competitive treatment for access services for a reasonable period; (6) an attribution provision as now required by N.J.A.C. 14:1-10.5(f); (7) Board review and approval of the service's satisfaction of statutory criteria prior to Board of approval of VNJ's offering of a competitive service; and (8) a reduction in access charges to cost-based UNE rates, and (9) a requirement that VNJ offer basic local business service on an a la carte basis. AT&Tb at 67-70; AT&Trb at 48-50.

4. WorldCom Position

WorldCom argued that in order to satisfy this criterion, a number of "critical local competition issues" must first be resolved. Specifically, WorldCom proposed the following preconditions to the Company's satisfaction of this criterion: (1) the Board's UNE rate Summary Order must be "actually, properly and finally implemented;" (2) nondiscriminatory access to UNEs must be

⁵⁶ AT&Tb at 66, citing N.J.S.A. 48:2-21.18(a) and -21.19(e).

⁵⁷ Ibid., citing the PAR-1 Order at 99.

⁵⁸ Id. at 66-67, citing the PAR-1 Order at 98-136, and PAR-1 §§ III. A. Through III. G.

finalized; (3) performance remedies must be implemented and effective; (4) VNJ's OSS must be able to handle actual commercial volumes in a real world environment; and (5) a Code of Conduct must be established and implemented. In the view of WorldCom, since VNJ's proposed PAR-2 does not by itself resolve these issues, this statutory criterion has not been met. WCb at 7-12.

5. Positions of Other Parties

XO argued that VNJ's proposed \$20 million ANJ contribution will unduly and unreasonably prejudice both providers of competitive services, by artificially deflating the prices of ANJ services to schools and libraries, and the schools and libraries customer class by restricting their carrier choices. XOb at 4; XOrb at 2. In addition, XO charged that the Board's sole reliance on the ANJ program ignores two critical issues: (1) it discriminates against schools and libraries in non-VNJ locations that cannot obtain ANJ services; and (2) it discriminates against competitive carriers that cannot make sales to schools and libraries because they cannot compete with the ANJ prices. XOb at 5. XO indicated that it favors instead the establishment of a state Universal Service Fund that would serve all New Jersey schools and libraries, and particularly opposed VNJ's proposal to all schools and libraries to take full advantage of both ANJ discount and federal USF discounts. Id. at 4-5. In XO's opinion, the Board's reliance on ANJ to develop high-tech and high quality infrastructure for schools and libraries only serves to limit competition within this customer class in favor of VNJ. XOb at 5.

NJCTA criticized VNJ for failing to make an affirmative showing that PAR-2 is not unduly prejudicial, despite the fact that several of the new plan's terms were of concern to competitors. CTAb at 42. NJCTA objected to the terms making new service offerings effective on five business days' notice, arguing that this period is too short for competitors to review a filing and make comments to the Board. Ibid. NJCTA doubted whether the Board could in fact make a reasonably detailed review in this time period, and surmised that the Board would tend to allow filings to become effective without the necessary oversight. Ibid. Similarly, NJCTA objected to the PAR-2 terms respecting revenue neutral rate restructuring, arguing that such filings should not enjoy an automatic effective date because this provision would place unreasonable time constraints on the Board and its staff, and might include bundled services that have an impact on competition. Id. at 43. NJCTA also questioned VNJ's proposed discontinuance of the use of embedded and fully-distributed cost studies for subsidy analysis, asserting that the Board

should not allow Verizon to include in the New Plan a proposal to provide less information than that which it currently provides. Id. at 44.

6. Discussion

Based on the evidence presented in this proceeding, and for the reasons set forth below, the Board FINDS that PAR-2, as modified herein, satisfies the statutory criterion of N.J.S.A. 48:2-21.18(a)(3), which requires VNJ to demonstrate that the New Plan does not unduly or unreasonably prejudice or disadvantage a class of customers or providers of competitive services.

We FIND that several elements of the New Plan, as modified, specifically, the expansion of the Lifeline program for low-income customers, and the enhanced ANJ initiative, while providing discrete advantages to defined customers, do not unduly or unreasonably prejudice or disadvantage other classes of customers or providers of competitive services. The Board is firmly convinced that it is neither inappropriate, nor unreasonable to provide limited financial assistance, in the form of Lifeline credits, to those customers most in need of such aid. With regard to the expanded ANJ program we have herein directed VNJ to provide, we disagree with XO's argument that the ANJ program unduly prejudices both providers and consumers. To the contrary, we FIND that ANJ represents both a valuable commitment and significant obligation on the part of the Company to the State's schools and libraries, which improves the lives of the State's students and citizens, to the benefit the entire State, including XO's customers, and has a positive benefit on the State's economy. We agree with VNJ's position that XO, as well as other New Jersey CLECs, may, if they choose to, provide competitive discounted ANJ-type services to schools and libraries using their own facilities or through resale of VNJ services. We agree with the Company that neither the PAR-2 nor the ANJ program can be or is responsible for the failure of XO, or other CLECs, to provide these services.

We find further support for our conclusion that the New Plan, as modified herein, meets the requirements of this criterion in PAR-2's express requirement that, in order to be approved, the Board must find that a proposed revenue neutral rate restructure does not unduly disadvantage one class of customers over another. With regard to revenue neutral rate restructures, we agree with the opposition of AT&T, the Advocate and NJCTA to VNJ's proposed New Plan requirement that "[t]he Board must issue a decision on any proposal within 90 days of the filing,

otherwise the proposal shall be deemed approved.” Proposed revenue neutral rate restructures hold the potential for significant impacts on the rates of VNJ’s customers and competitors and warrant Board review and approval prior to their becoming effective. The parties to this proceeding shall be provided notice and copies of all such filings at the time of their filing with the Board and the maintenance of current requirements regarding informational tariffs and reporting for competitive services, have not been modified under this Plan.

With regard to competitors in particular, we FIND that the Board’s rules and regulations, as well as its administrative provisions that apply to all providers (including the streamlined process for the introduction of new services embodied in PAR-2 as modified) ensure that competitors will not be disadvantaged. We concur with VNJ that there are several aspects of the regulatory environment in New Jersey ensuring that competitors will not be prejudiced or treated unfairly, including: (1) the existence of the TSFT to resolve competitors’ issues (including issues associated with competitors’ access to UNE-P and OSS); (2) provisions of the 1996 Act providing for Board review of the terms and conditions of interconnection agreements for consistency with the public interest; (3) the existence of Board – approved Carrier-to-Carrier Guidelines and an Incentive Plan to ensure compliance with those Guidelines⁵⁹; and (4) the Board approved expedited Dispute Resolution process geared to efficiently and effectively resolve disputes between carriers regarding issues impacting competition.⁶⁰

We REJECT AT&T’s request that the Board specifically modify PAR-2 to require VNJ to offer an a la carte business exchange (1MB) service. We note that local exchange services for small business customers with one (1) to four (4) lines are not reclassified as competitive herein. Accordingly, 1 MB service remains available to those customers as a regulated service. We agree with VNJ that Board approval herein of VNJ’s request for reclassification, as modified, by necessity incorporates specific findings that the reclassification of business services for business customers with five or more lines is justified by evidence concerning the presence of competitors, existence of like and substitute services, and no barriers to entry.

⁵⁹ See Orders I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services; I/M/O The Board’s Investigation Regarding the Status of Local Exchange Competition In New Jersey, Docket Nos. TX95120631 and TX98010010, (dated July 13, 2000; November 9, 2001; January 10, 2002; March 28, 2002).

⁶⁰ See Order on Reconsideration, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631 (June 19, 1998).

We further REJECT the requests of WorldCom and AT&T that the Board resolve a number of “local competition” issues prior to resolving this proceeding. We note that these issues are the proper subject of numerous other proceedings that have recently been decided, that will be decided, and that undoubtedly will continue to be considered in all their complexity, by the Board, the FCC, and the courts. We therefore FIND that there is no basis to delay the implementation of PAR-2 until issues in other Board proceedings are decided. Lastly, with regard to the parties’ comments regarding the impact on classes of customers or competitors of the five business day notice period for new services, we REJECT VNJ’s five day notice proposal in favor of 30 days notice, as the appropriate balance between the need to provide customers and competitors adequate notice of these new services and the desirability of implementing these services in a timely manner. We have similarly rejected VNJ’s proposed 90-day decision period for proposed revenue neutral restructures in favor of a requirement of affirmative Board approval.

D. Will the New Plan Reduce Regulatory Delay and Costs?

N.J.S.A. 48:2-21.8(a)(4) requires that the Board must, in order to approve a Plan, find that the Plan will reduce regulatory delay and costs.

1. VNJ Position

VNJ pointed out that both the Legislature and the Board have found that rate of return regulation is expensive and inefficient.⁶¹ VNJ argued that PAR-2 would reduce regulatory delay and costs by (1) streamlining the introduction of new services and the re-pricing of existing services, (2) reducing unnecessary reporting requirements, and (3) eliminating the exogenous events provision. Id. at 27-31. According to VNJ, through these measures, customers will have the benefit of choosing from an increasing number of optional services, and will be able to receive these services more quickly. Id. at 28. Furthermore, VNJ alleged that the streamlining provisions of PAR-2 would achieve these goals while, at the same time, “retaining the Board’s authority to investigate and suspend, if necessary, all aspects of any new service if the filing violates any Board rule or does not conform to the law.”⁶² VNJ argued that by virtue of making

⁶¹ Id. at 27, citing VNJ-10 at 15 and PAR-1 Order at 141.

⁶² Ibid., citing VNJ-10, PAR-2 Plan at Exhibit 2, Section III. A. 4.

new services effective without prior Board action delaying the service, “regulatory resources will be conserved.”⁶³

VNJ also asserted that PAR-2 would reduce regulatory burdens by eliminating excessive and unnecessary financial monitoring. Specifically, VNJ noted that under PAR-2, financial reports for rate regulated services detailing earnings and return on equity will not be necessary since the sharing provision and formula-based rate adjustment provision have been eliminated. In addition, as noted in the previous section, VNJ proposed discontinuing the quarterly and annual filings of embedded and fully distributed cost studies. Id. at 28-30.

The Company further contended that eliminating the exogenous events provision also supports the statutory goal of reducing regulatory delay and cost. Id. at 30. VNJ noted that it had never filed for rate relief under the exogenous events provision contained in PAR-1 and, in the Company's opinion, such a filing would only provoke extended litigation. Id. at 30-31. Accordingly, VNJ declared that its ability to petition the Board for rate relief, and the Board's concomitant authority to investigate such a rate filing and approve it, modify it, or reject it based on the merits of VNJ's claims, is both sufficient and preferable to the exogenous events provision alternative. Ibid.

2. Advocate Position

The Advocate criticized VNJ's proposed elimination of the quarterly financial monitoring reports, arguing that such action would deprive the Board of an important vehicle for monitoring PAR-2. RPA at 50. Recommending that the Board retain this requirement, the Advocate argued that VNJ's proposal is flawed in that “it erroneously assumes that the markets in which Verizon-NJ participates are competitive enough that Board scrutiny may be reduced to next to nothing.” Id. at 50-51. The Advocate also opposed elimination of the exogenous event provision, contending that doing so would “complicate and burden the regulatory system,” and leave VNJ with unwarranted advantages over competitors and customers. Id. at 50. According to the, Advocate eliminating the exogenous event provision would essentially mean that changes in the New Plan could occur only after a protracted, burdensome rate case, and would thus deprive the Board of flexibility in responding to unanticipated changes. Ibid. The Advocate also charged that VNJ's proposals for new services and revenue neutral rate restructuring would

⁶³ Ibid., citing VNJ-10 at 16 and VNJ-12 at 26.

enable VNJ to evade appropriate regulatory scrutiny, rather than reduce regulatory delay and costs. Id. at 52.

3. AT&T Position

AT&T asserted that PAR-2 will not likely reduce regulatory delay and costs for competitive providers or the Board, but may reduce certain regulatory costs of VNJ by allowing it to introduce, reclassify and restructure services without prior Board approval. AT&Tb at 70-71. AT&T contended that such costs may increase, since (1) PAR-2 allows VNJ to request modification or replacement of the New Plan at any time, meaning that the parties may be forced to re-litigate this case on multiple occasions; (2) VNJ has not proposed specific standards to govern any prospective application for an adjustment to regulated rates, meaning that the parties may have to litigate this fundamental issue whenever VNJ seeks a rate adjustment; and (3) PAR-2 places new burdens on customers, competitors, and the Board in addressing filings that become effective on five days notice, in that the burden and costs of addressing the impact of these services during this limited window and/or after service is already in effect may actually exceed the burden associated with the normal procedure of prior approval. Id. at 71-72. AT&T also contended that the absence in the New Plan of provisions creating market-opening incentives means that competitors will have to continuously rely on litigation and the regulatory process to “achieve a non-discriminatory environment for the provision of OSS and UNEs”. Id. at 71, citing AT&T-80 at 19.

4. WorldCom Position

WorldCom rejected VNJ’s streamlined process for the introduction of new services and changes in the pricing of existing services, arguing that the proposal will instead create additional regulatory burdens. WCb at 12. WorldCom asserted that the provision violates N.J.S.A. 48:2-21.19(b), which requires Board approval for the determination of a competitive service, after notice and a hearing. Ibid. In addition, WorldCom noted that in situations where the Board eventually decides that a service, already in effect, is not appropriately classified as competitive, Board monitoring will be required for the notice, termination, and implementation of any refunds. Id. at 12-13. WorldCom also took issue with revenue neutral rate restructures for regulated services, charging that the proposal places a substantial burden on the Board. Id. at 12-14. WorldCom, like AT&T, also noted that “the absence of policies, rules and penalties designed to

overcome [VNJ's] existing incentives to discriminate against local market competitors" will require the Board address issues of competition in additional proceedings. Id. at 13.

5. Positions of Other Parties

NJCTA asserted that VNJ's proposal to make new service offerings effective in five days may lead to situations in which the Board will have to revise an offering after it has become effective and customers have relied on its terms. CTAb at 42. NJCTA also alleged that VNJ's expedited revenue neutral rate restructuring proposal may require the Board and parties to address issues "just as complex – if not more so – as those in a rate increase proceeding." Id. at 43.

6. Discussion

The Board FINDS that PAR-2, as modified herein, satisfies the N.J.S.A. 48:2-21.8(a)(4) requirement of reduced regulatory delay and costs. The 1992 New Jersey Act expresses, and our implementation of the Act since 1992 recognizes, an underlying policy that traditional rate of return regulation can be costly and inefficient, imposing significant administrative burdens that are substantially lessened by alternative regulation plans. We FIND that PAR-2 will further reduce regulatory delay and costs by (1) streamlining the introduction of new services or the re-pricing of existing services, and (2) reducing reporting requirements.

We agree with VNJ that the provisions of PAR-2 streamline the introduction of new services, while retaining the Board's authority to investigate and suspend, if necessary, all non-conforming aspects of any new service. While we take notice of WorldCom's and AT&T's allegations that permitting new services to become effective on five days' notice will actually increase regulatory burdens, we believe that our modification to a 30 day notice instead of VNJ's five day proposal reasonably addresses these concerns. We concur with VNJ's contention that the provision is clearly pro-competitive, in that it reduces barriers currently undermining VNJ's ability to bring new products to market, and ensures that customers are afforded the opportunity to benefit from new services without unnecessary delay. We further concur with the Company's assessment that it is reasonable to believe that in most circumstances, new service introduction will be non-controversial and benefit consumers who voluntarily choose to purchase those services.

We also believe that prohibiting the filing of a subsequent plan within four years of the adoption of PAR-2 reasonably addresses AT&T's concerns regarding future replacement or modification of PAR-2. We FIND, further, that PAR-2 will reduce the regulatory burdens associated with the current financial monitoring requirements. Continuation of the existing detailed monitoring of earnings data for rate regulated services will not be necessary because there is no sharing provision in PAR 2. In addition, we FIND that PAR-2 provides for the simplification of monitoring and reporting on potential cross-subsidization of competitive services from non-competitive services. The Board DIRECTS VNJ to (1) provide annual financial reports to the Board so that it may monitor the revenue and costs of its competitive services, and determine whether, in the aggregate, the total revenues for VNJ's competitive services exceed the total direct costs of those services, and (2) eliminate reports from the EAS system, and to provide annual financial reporting of its rate regulated services and to work together with Staff and the Advocate to determine the format for such annual financial reporting on its rate regulated services, and to ensure, as much as reasonably possible, that the format is consistent with similar reporting in other Verizon jurisdictions.

While the Board respects VNJ's concerns, it is our view that including an exogenous events provision in a plan of alternative regulation is not inherently flawed. We believe that the provision's terms are sufficiently defined so as to avoid needless disputes in the event the provision is invoked. We therefore DIRECT that PAR-2 incorporate the exogenous events provision included in the current PAR-1, including the provision that defines an exogenous event to mean a major, unexpected extraordinary event that is beyond the Company's control, and is one that includes, but is not limited to, changes in tax laws, accounting rules, as well as regulatory, judicial, and legislative changes, and acts of terrorism affecting VNJ.⁶⁴

E. Will the New Plan Enhance Economic Development in New Jersey while Maintaining Affordable Rates?

N.J.S.A. 48:2-21.18(a)(6) requires that the Board, in order to approve an alternative regulation plan, find that the New Plan will enhance economic development in the State while maintaining affordable rates.

⁶⁴ The PAR-2 exogenous event provision shall not include the PAR-1's reference to "the provision of intraLATA services."

1. VNJ Position

VNJ maintained that PAR-2 will enhance economic development in New Jersey by continuing and augmenting the Company's infrastructure commitments. VNJb at 31-34; VNJrb at 59-60. Specifically, under PAR-2, VNJ proposed expanding its existing commitment to ANJ by an additional \$20 million, consisting of a \$14 million addition to the CPE fund as well as an incremental \$6 million to support the development of interactive video content, equipment upgrades for video over Internet Protocol, maintenance, and staffing.⁶⁵ In addition, VNJ proposed extending, to the end of 2004, the discount rates that apply to ANJ, so that contracts signed in the year 2004 will continue those ANJ rates for three additional years through 2007. VNJb at 32. VNJ further proposed that schools and libraries be allowed to take full advantage of both ANJ rates and federal Universal Service Fund discounts, a change from prior policy. Ibid. VNJ alleged that the deeper discounts and indefinite term proposed by the other parties are unwarranted and unnecessary, and similarly counseled against the establishment of a State USF program. Ibid. With respect to the ONJ program, VNJ declared that the Company will continue its PAR-1 ONJ commitments⁶⁶ under PAR-2. According to VNJ, the New Plan will therefore enhance economic development in New Jersey for the same reasons set forth in the Board's Order approving the PAR-1. Id. at 33. VNJ further alleged that the absence of an earnings sharing constraint in PAR-2 will "increase the [C]ompany's incentives to invest, and to implement and market new products and services." Ibid. According to VNJ, these incentives will increase "because profits from successful investments and risk taking will not be taxed, and reduced earnings from unsuccessful ventures will not be mitigated."⁶⁷ VNJ also argued that these incentives to invest and develop new products will be further enhanced by the proposed streamlined approval process for the introduction of new services under PAR-2. Ibid.

2. Advocate Position

The Advocate asserted that the proposed New Plan will "do nothing to enhance economic development in New Jersey."⁶⁸ The Advocate's witness, Dr. Lee L. Selwyn, stated that the New

⁶⁵ VNJb at 32, citing VNJ-10 at 24-25.

⁶⁶ The remaining commitment under Opportunity New Jersey is 100% Broadband availability (switching and transmission rates of up to 45 megabits per second and higher) by year-end 2010.

⁶⁷ Ibid., quoting from VNJ-10 at 5.

⁶⁸ RPAb at 52, citing RPA -20A at 43-44.

Plan's "lax regulatory structure" does not protect customers of non-competitive services. RPA-20A at 43. He also stated that the proposed New Plan "does nothing to promote-or even facilitate-the development of effective [local] competition," the failure of which will have an impact on several major New Jersey employers that have a major stake in the success of local competition. Ibid.

3. AT&T Position

AT&T asserted that there is no evidence in the record that economic development in New Jersey will be enhanced while maintaining affordable rates under VNJ's proposed PAR-2. AT&Tb at 73-75; AT&Trb at 51. AT&T alleged that there is no evidence that the existing PAR 1, even with the Board-imposed ONJ commitments, stimulated meaningful new investment by VNJ or others in New Jersey. AT&Tb at 74; AT&Trb at 51. AT&T contended that "the reality is that VNJ likely would have improved and upgraded its infrastructure in the same manner without ONJ. AT&Trb at 51. AT&T charged that PAR-2, unlike PAR-1, does not include any new infrastructure investment commitments or provisions comparable to the existing ONJ commitments established under PAR-1. AT&Tb at 74. According to AT&T, to the extent that ONJ enhances economic development, an assertion AT&T contends has not been proven, it is a result of the existing PAR-1. AT&Tb at 74; AT&Trb at 51. AT&T also argued that VNJ had provided no evidence that PAR-2 will spur economic development by stimulating local exchange competition in New Jersey, and that it is such competition that stimulates investment. AT&Tb at 74-75. AT&T urged the Board to require new commitments in PAR-2 to stimulate competition and economic development, such as structural separation and reduced access charges. Id. at 75.

4. WorldCom Position

WorldCom also argued that VNJ's reaffirmation of existing PAR-1 commitments does not increase economic development. WCb at 14. According to WorldCom, only by opening the local exchange market to competition will economic development in New Jersey be truly enhanced, since local competition will bring new Companies to New Jersey adding both facilities and human resources. WCb at 14-15; WCrb at 9. WorldCom asserted that economic development will only be enhanced when there is an opening of the local exchange telecommunications market through (1) final implementation of the Board's UNE rate Order; (2)

finalization of non-discriminatory access to UNEs; (3) a demonstration that VNJ's OSS is able to handle commercial volumes; (4) performance remedies are implemented and effective; and, (5) a comprehensive code of conduct is adopted and enforced. WCb at 15; WCrb at 9.

5. Discussion

The Board FINDS that PAR-2, as modified herein, will enhance economic development in the State while maintaining just and reasonable rates. We FIND that VNJ's agreement under PAR-2 to implement the augmented ANJ program, which will enable schools, libraries and other institutions to have access to telecommunications equipment and services at substantially reduced rates, will be a major catalyst to economic development in New Jersey. In the PAR-1 Order, we found evidence of a positive relationship between infrastructure investment and economic development. See PAR-1 Order at 72-98. The Board relied on this evidence in finding that PAR-1, including the infrastructure commitments contained in the ONJ program, enhanced economic development while maintaining affordable rates. Ibid. With respect to ONJ, which VNJ is obligated to continue under PAR-2, we have found in progress review proceedings that VNJ has demonstrated that it is fulfilling its commitments and that the economic development benefits of the program are greater than anticipated.⁶⁹ VNJ shall continue its existing obligations to file infrastructure deployment reports detailing its progress on ONJ. Since the approval of PAR-1 in 1993, VNJ has expanded its infrastructure commitments to include ANJ, and, as we discussed above, PAR-2 as modified provides for substantially increased ANJ benefits, as well as the continuation of VNJ's ANJ rates through 2014. Because ANJ is an extension of VNJ's ONJ infrastructure commitments, we FIND that ANJ will enhance economic development in many of the same ways and for some of the same reasons as set forth in the PAR-1 Order. For example, in the PAR-1 proceeding, the Board noted its Staff's favorable assessment of ONJ's "positive impact on quality of life and...economic development" through distance learning, expanded curriculum and reduced educational shortages and budgetary pressures. PAR-1 Order at 85-86. In its review of PAR-1, Staff concluded that "[t]elecommunications can...therefore build the technological base necessary for efficient performance in the marketplace available to a highly educated workforce." Id. at 86. At that time, the Board also found persuasive a 1991 report by the United States Department of

⁶⁹ See Order Approving Stipulation, I/M/O The Board's Inquiry Into Bell Atlantic-New Jersey Inc.'s Progress and Compliance With Opportunity New Jersey, Its Network Modernization Program, Docket No. TX96100707 (June 10, 1997); Order of Approval, I/M/O The Board's Inquiry Into Bell Atlantic-New Jersey, Inc.'s Progress and Compliance With Opportunity New Jersey, As Accelerated By Order Dated June 10, 1997, Docket No. TX99020050 (March 30, 2001); VNJB at 33.

Commerce, National Telecommunications and Information Administration (NTIA), The NTIA Infrastructure Report: Telecommunications in the Age of Information (hereinafter, NTIA Report). The NTIA Report concluded that “although cause and effect cannot be determined precisely, positive, reciprocal relationships do exist between infrastructure investments and economic development.” Id. at 77, 89. In addition, the Board noted the NTIA Report finding that “telecommunications can produce benefits that extend beyond the realm of economic development, and can enhance social welfare by improving delivery of critical services, such as education... and can enhance quality of life by...permitting persons with disabilities to share in opportunities otherwise unavailable to them.” Id. at 89-90. We continue to FIND that not only does ANJ directly enhance the economic development of our State’s most essential educational institutions, our schools and libraries, but ANJ also enhances the State’s economic development in a more general, less direct but by no means less important manner, by helping to prepare the educated and skilled workforce needed to attract business and industry to the State, and by helping our schools and libraries provide the excellent learning opportunities needed to attract families to New Jersey.

We agree with VNJ that many of AT&T’s and WorldCom’s claims that PAR-2 will not enhance economic development are largely based on misplaced arguments that PAR-2 fails to promote local competition. As we have already noted, it is our belief that the language of N.J.S.A. 48:2-21.18(a) does not require or even suggest that the authorization of alternative regulation plans must be delayed until “final resolution” of numerous other issues governed by both federal and State agencies under multiple federal and State statutes and evolving rules, which issues are being, or have been, thoroughly explored in other proceedings. We also agree with the Company that, because PAR-2 does not impose any earnings sharing constraint and permits rapid introduction of new services, VNJ should realize increased incentives to invest in the infrastructure needed to implement and market new products and services. We believe that these investments will further encourage competition and enhance economic development in the State.

F. Does the New Plan Contain a Comprehensive Program of Service Quality Standards?

N.J.S.A. 48:2-21.18(a)(7) requires that any plan for an alternative form of regulation contain a comprehensive program of service quality standards, with procedures for Board monitoring and review. As described below, the Board has determined to revise VNJ's existing service quality metrics and performance standards and to introduce new metrics and standards, based upon both the record in this matter and data from VNJ's past performance. As modified, and for the reasons set forth below, the Board FINDS that PAR-2 satisfies this statutory criterion.

1. Background

Metrics and standards⁷⁰ for the regulation of the quality of retail telecommunications services in New Jersey have been in place since before the divestiture of AT&T in 1984, and the Board updated them as a part of the 1987 Rate Stability Plan (RSP) proceeding of New Jersey Bell Telephone Company.⁷¹ When VNJ entered into the current alternative regulatory plan in 1993, the Board saw fit to continue the RSP service quality protocol⁷², finding that the service quality metrics and standards in effect "are comprehensive and maintain a reasonable level of service accountability to the Board." PAR-1 Order at 139. Following the 1997 Bell Atlantic/NYNEX merger, VNJ provided the Board with a matrix that set forth the applicable service quality metrics and standards in each jurisdiction of the old Bell Atlantic footprint⁷³ in order to help the Board "to continue to monitor BA-NJ's service and, if warranted, take appropriate action in the future to remedy any problems which arise based on facts and thoughtful investigation."⁷⁴

As an integral part of the service quality plan adopted by the Board in the RSP proceeding, the Board had established an "exception level" and a "surveillance level" of performance for each of

⁷⁰ As used herein, the term "metric" refers to the activity being measured, e.g., the customer trouble report rate per 100 customer lines, and the term "standard" refers to how well VNJ performs with regard to the activity being measured, e.g., a customer trouble report rate of 4%, or 4 reports per 100 lines. See VNJ-21 at 2.

⁷¹ See Order in I/M/O The Petition of New Jersey Bell Telephone Company for Approval of a Proposal for a Rate Stability Plan and Relaxed Earnings Surveillance for Certain Competitive Services, Docket No. TO87050398 (June 22, 1987) at 5.

⁷² Retail service quality standards shall also be referred to herein as Quality of Service (QOS) standards,

⁷³ The "old Bell Atlantic footprint" refers to the Bell Atlantic Corporation operating companies in New Jersey, Pennsylvania, West Virginia, Virginia, Maryland, Delaware and Washington, D.C.

⁷⁴ See Order in I/M/O Board's Review of the Amended and Restated Agreement and Plan of Merger Dated as of April 21, 1996 By and Between NYNEX Corporation and Bell Atlantic Corporation, Docket No. TM96070504 (May 22, 1997) at 15.

the metrics. If VNJ were to fall short of the exception level for any metric for three consecutive months, VNJ is required to investigate and take appropriate corrective action. If VNJ were to fail to meet the surveillance level for any metric for three consecutive months, it must make a special filing with the Board that explains the problem and, at the same time, provides a corrective action plan. The metrics and standards in place since the 1987 RSP proceeding are as follows:

RETAIL SERVICE QUALITY STANDARDS SUMMARY

Retail SQ Standard	Reporting Levels (exception/surveillance level %)
(1) customer trouble report rate per 100 access lines	total company = 4/5 each area = 5/6
(2) percent out-of-service troubles cleared within 48 hours	total company = 90/88 each area = 86/85
(3) percent commitments met as negotiated with customer to clear troubles	total company = 81/80 each area = 76/75
(4) percent service order provisioning completed within 5 working days	total company = 90/88 each area = 87/85
(5) percent service order provisioning appointments met	total company = 99/96 each area = 98/88
(6) percent calls completed in the toll/access network	total company = 99.4/98.5 each area = N/A
(7) percent offices above dial tone speed objective	total company = 98/98 each area = N/A (levels reported separately for Madison NOC and Freehold NOC)
(8) percent switching offices performing at or above call completion objective	total company = 98/95 each area = N/A (levels reported separately for Madison NOC and Freehold NOC)
(9) percent directory assistance calls answered within 10 seconds	total company = 80/78 each area = N/A

(10) percent toll and local assistance calls answered within 10 seconds	total company = 92/88 each area = 90/85
(11) percent customers having no difficulty reaching the business office for both residence and business	total company = 99/90 each area = N/A
(12) percent customers having no difficulty reaching repair for both residence and business	total company = 88/87 each area = N/A

The geographical areas reported in measures 1-5 and 10 are: Eastern Shore; Hudson/Bergen; Raritan; Southern; and Suburban.

2. Statement of the Issue

N.J.S.A. 48:2-21.18(a)(7) requires that any plan for an alternative form of regulation contain a comprehensive program of service quality standards together with procedures for Board monitoring and review. The Board's December 22, 2000 Order required VNJ to submit "a new comprehensive proposal of service quality standards that includes all applicable retail metrics contained in the Carrier-to-Carrier Guidelines...with new standards at least as stringent as those contained in the Carrier-to-Carrier Guidelines." See December 22, 2000 Order at 5. In its proposed PAR-2, VNJ states that it "will continue to file the service quality reports it currently provides to demonstrate compliance with the service quality bench marks established by the Board in Docket No. TO87050398." See VNJ-10, Exhibit 2 at 5. VNJ's proposed service quality plan acknowledged the Board's right to "terminate the Plan, after notice and hearing, in the event that a substantial degradation of service is found to exist." Ibid. The issue before the Board is whether a continuation of current service quality metrics and standards, as revised by VNJ, adequately protects the consumers of New Jersey under today's conditions, or whether the number and scope of these service quality metrics should be revised, and the current standards made more stringent.

3. Positions of the Parties

a. VNJ Proposal

According to the Company, pursuant to the Board's December 22, 2000 Order, VNJ undertook a comprehensive review of its service quality metrics and standards. VNJb at 54. VNJ stated that, as part of that review, it examined the Carrier-to-Carrier Guidelines adopted by the Board on July 13, 2000 and found that in every case, retail metrics and standards proposed by VNJ were at least as stringent as those contained in the Carrier-to-Carrier Guidelines. Ibid. In addition, VNJ stated that it reexamined the metrics and standards currently in place, and, through the February 15, 2001 testimony of its witness, Linda D. Thomas, submitted what it considered to be a "new comprehensive proposal." Ibid.; VNJ-21. Following is a summary of that proposal:

VNJ'S RETAIL SERVICE QUALITY PROPOSAL

Retail SQ Standard	Reporting Levels (exception/surveillance level %)
(1) Customer Trouble Report Rate Per 100 Access Lines	total company = 4/5 each area ⁷⁵ = 5/6
(2) Percent Out-Of-Service Troubles Cleared Within 24 Hours	total company = 75/70 each area = 70/65
(3) Percent Commitments Met As Negotiated With Customer To Clear Troubles	total company = 81/80 each area = 76/75
(4) Percent Subsequent Reports	total company = 15/18 each area = 18/21
(5) Mean Time To Repair	total company = 35/40 each area = 40/45
(6) Percent Service Order Provisioning Completed Within 5 Working Days	total company = 90/88 each area = 87/85
(7) Percent Service Order Provisioning	total company = 99/96

⁷⁵ The geographical areas reported in measures 1-7 are: Eastern Shore/Raritan; Hudson/Bergen; Southern; and Suburban. These areas are subject to change when impacted by VNJ organization modifications.

Appointments Met	each area = 98/88
(8) Percent Calls Completed In The Toll/Access Network	total company = 99.4/98.5 each area = N/A (levels report for Suburban, Hudson/Bergen, Easton Shore/Raritan and Southern areas)
(9) Percent Offices Above Dial Tone Speed Objective	total company = 98/98 each area = N/A (levels reported separately for Madison NOC and Freehold NOC)
(10) Percent Switching Offices Performing At Or Above Call Completion Objective	total company = 98/95 each area = N/A (levels reported separately for Madison NOC and Freehold NOC)
(11) Percent Directory Assistance Calls Answered Within 10 Seconds	total company = 80/78 each area = N/A
(12) Percent Toll And Local Assistance Calls Answered Within 10 Seconds	total company = 92/88 each area = N/A
(13) Percent Customers Having No Difficulty Reaching The Business Office For Both Residence And Business	total company = 99/90 each area = N/A (levels reported by Residence and Business)
(14) Percent Customers Having No Difficulty Reaching Repair For Both Residence And Business	total company = 88/87 each area = N/A

See Id. at 55. VNJ's proposal makes three (3) changes to the existing service quality metrics and standards. First, it replaces the existing maintenance metric, "Percent Out Of Service Troubles Cleared Within 48 Hours," with "Percent Out Of Service Troubles Cleared Within 24 Hours," and proposes for this metric an exception level of 75% and a surveillance level of 70%. VNJ-21 at 9. The Company explained that this change would make the modified retail metric "reflect the same 24 hour interval as the Carrier-to-Carrier "trouble duration interval" metric (MR - 4-04)." Ibid. Second, VNJ's service quality proposal adds the Maintenance metric, "Percent Subsequent Reports," with a proposed exception level of 15% and a proposed surveillance level of 18%, and also adds the metric, "Mean Time To Repair," with a proposed exception level of 35 hours and a proposed surveillance level of 40 hours. According to the Company, these

proposed measures mirror what already exists in the Carrier-to-Carrier Guidelines for MR -2-04 (subsequent reports) and MR -4-01 (mean time to repair). Id. at 9-10. Third, VNJ proposed to file retail service quality results on a monthly, rather than quarterly basis, “given that the wholesale results are reported monthly.” Id. at 10. See also VNJb at 56.

VNJ asserted that although the Board has monitored the Company’s service quality metrics and standards for fourteen years, it has found no reason to change those metrics and standards. Id. at 52. VNJ pointed out that during those fourteen years the Board has made no finding that the current service quality plan was not comprehensive or not reasonable, or that VNJ has not performed well under those standards. Id. at 53. VNJ also contended that this proceeding should not be used as a vehicle to set service quality standards applicable to only one carrier, and argued that, if anything, the Board should be eliminating or streamlining service standards, and allow “service quality and customer satisfaction ...[to] be measured and governed to a far greater extent by the marketplace.” Id. at 53-54, quoting from VNJ-21 at 11.

b. Advocate Position

The Advocate asserted that VNJ failed to propose a new comprehensive service quality plan, and accordingly, failed to comply both with the terms of the Act, and the requirements of the December 22, 2000 Order. RPAb at 93-94. The Advocate asserted that, although the December 22, 2000 Order required VNJ to propose a “new, comprehensive proposal of service quality standards ... with new standards at least as stringent as those contained in the Carrier-to-Carrier Guidelines,” VNJ proposed “merely to maintain the existing plan.” Id. at 94, quoting from the December 22, 2000 Order at 5.

In order to correct this shortcoming, the Advocate proposed its own quality of service plan through the testimony of its witness, Barbara Alexander. Ms. Alexander stated that during the past six years, VNJ “has performed reasonably well with respect to the service quality measurements and performance standards required by the prior PAR.” RPA-39 at 3, 14. However, Ms. Alexander noted that the current standards do not capture important areas of customer service and reliability, such as the actual performance of VNJ’s customer call centers and the reliability and performance of VNJ’s network with respect to outages. Id. at 14. The Advocate argued for rejecting VNJ’s proposal and replacing it with a set of metrics and

standards that included metrics in the areas of installation of service, maintenance of service, network reliability and access to VNJ. RPA-39 at 3-4, 21-24 and Exhibit BA-3. In addition to these proposed metrics, the Advocate, also through Ms. Alexander's testimony, proposed a system of self-effectuating penalties, a customer-specific rebate program, revised quality of service reporting, and the adoption of specific regulations establishing a code of corporate conduct to prevent "unfair" marketing of competitive services. See, generally, RPA-39. The Advocate noted that service quality in other states has deteriorated in recent years, and offered its proposal as its recommended method of preventing similar deterioration in New Jersey. RPA-39 at 13.

The Advocate's proposed service quality index for VNJ is as follows:

Performance Area	Baseline
(1) Percent Service Order Processing Completed Within 5 Working Days ⁷⁶	94%
(2) Service Order Provisioning Appointments. Met	99%
(3) Customer Trouble Report Rate per 100 lines	2.3
(4) Out Of Service Troubles Cleared within 24 hours	80%
(5) Average Local Service Repair Interval-Repeats (Res.)	30 hours
(6) Commitments Met to Clear Troubles	81%
(7) Dial Tone Speed Within 3 Seconds	98%
(8) Service Reliability: Service Outage (5,000 lines > 30 minutes) Interoffice Fiber Failure (30,000 lines > 30 minutes) SS7 Failure (30 minutes)	1 1 1
(9) Business Office Performance: Calls answered within 20 seconds Busy-Signal	80% 5%

⁷⁶ The Advocate originally argued in place of this a new metric, "Average Installation Interval For Local Service (Res.)." The proposed performance standard of 2.5 days for that new metric was not based upon documented company performance. In Supplemental Testimony filed September 13, 2001, the Advocate retracted this recommendation, because it had been the misunderstanding of its expert Alexander that ARMIS data purportedly justifying the recommendation of a 2.5 day interval did not include optional or vertical service orders. The Advocate supports the future development of a metric that would isolate performance intervals for basic exchange service only. See RPA-54A.

Performance Area	Baseline
(10) Repair Office Performance: Calls answered within 20 seconds Busy-Signal	80% 5%
(11) Customer Complaints per 1 Million Residential Access Lines	200

[RPA-39, Exhibit BA-3].

According to the Advocate, its “baseline” performance standard for each performance area is a single standard intended to represent “best practices” in the provision of service quality. Ms. Alexander testified that each standard is based either on the Company’s historical performance over the past 5-6 years, or on the performance Verizon has demonstrated it can achieve in other jurisdictions. RPA-39 at 24. The Advocate asserted that these standards are often similar to the “exception” level in the existing VNJ service quality plan, and that the present “two-tiered” approach incorporating a “surveillance” level is inappropriate because “[t]here is no reason to allow Verizon – NJ to deteriorate in its performance down to surveillance levels.” Ibid.

i. Installation of Service (Metrics (1) and (2))

The Advocate recommended retention of the present metric “Percent Service Order Provisioning Completed Within 5 Working Days,” with a new performance standard of 94 percent, as a replacement of the current exception level of 90 percent and the current surveillance level of 88 percent. With respect to (2), “Service Order Provisioning Appointments Met,” the Advocate’s proposed performance standard is 99 percent. As noted above, the Advocate’s general rationale for the new baseline standards is that these levels are “based on the best practices of incumbents in New Jersey or elsewhere.” RPAb at 97, citing RPA-39 at 24-25.

ii. Maintenance of Service (Metrics (3) through (6))

With respect to Metrics (3), "Customer Trouble Report Rate Per 100 Lines," (4), "Out of Service Troubles Cleared Within 24 Hours," and (6), "Commitments Met To Clear Troubles," the Advocate's proposed QOS standards mirror the Board's current standards, with one change. Metric (5) is new. RPA-39 at 22. With respect to Metric (3), the Advocate proposed to raise the performance standard to require a baseline of 2.3 trouble reports per 100 lines, rather than the current exception level of 4.0 and surveillance level of 5.0. The Advocate acknowledged that VNJ's actual performance in recent years has been at that level. RPA-39 at 17.

With respect to (4), "Out Of Service Troubles Cleared Within 24 Hours," the Advocate is in agreement with VNJ's proposal that the period to be measured should be reduced from 48 hours to 24 hours. See RPA-39, Exhibit BA-3 and VNJ-21 at 9, Attachment E. The Advocate's proposed baseline for this new metric is 80%, in contrast to VNJ's proposed standard of exception and surveillance levels at 75% and 70%, respectively. Ibid.

The Advocate's proposed Metric (5), "Average Local Service Repair Interval -- Repeats (Res.)," is entirely new. This proposed metric measures the speed with which VNJ responds to repeat residential trouble reports. The Advocate advised that public historical data exists for this metric in the FCC's Automated Reporting Management Information System (ARMIS) database. RPA-39 at 22. The Advocate noted that this ARMIS data demonstrated that VNJ's performance in this area had deteriorated over the last several years. Id. at 18. Ms. Alexander reported that the Repair Interval for Residential Customers has risen from 26 hours in 1996 to 33 hours in 2000. Ibid. She also reported that the ARMIS data for Repair Interval for Repeat Trouble reports has increased from 24 hours in 1996 to 36 hours in 2000. Ibid. Finally, with respect to (6), "Commitments Met To Clear Troubles," the Advocate proposed to raise the current performance standards from an exception level of 81% and a surveillance level of 80% to a flat standard of 81%.

iii. Network Reliability (Metrics (7) and (8))

With respect to network reliability, the Advocate recommended that the Board discontinue the two (2) Call Completed performance metrics that do not directly measure customer performance. The Advocate would have the Board abandon the existing metrics that track VNJ central office performance, that is, the “Percent Offices Above Dial Tone Speed” and “Percent Switching Offices Performing at or Above Call Completion Objective.” Ms. Alexander testified that these metrics inappropriately measure the “percentage of offices that attain a corporate objective.” *Id.* at 18-19. Ms. Alexander argued that the underlying performance should be measured directly. *Id.* at 19. Accordingly, the Advocate proposed Metric (7), “Dial Tone Speed Within Three Seconds,” abandoning the measurement of the percentage of central offices that exceed the objective of 3 seconds for obtaining dial tone and substituting a statewide measurement. The Advocate would set the performance standard for this metric at 98 percent, similar to the existing exception levels for the office – based metrics that it proposed to discontinue.⁷⁷ Ms. Alexander noted the need to retain the measure of Dial Tone Speed due to a lengthening of the delay in obtaining a dial tone in some “other states” associated with the design of some trunks and switches that “did not anticipate the increase in call volume due to the growth in the Internet.” RPA-39 at 22-23.

With respect to (8), “Service Reliability,” the Advocate asked the Board to adopt metrics that would track service outages for more than 5,000 lines for more than thirty minutes, interoffice fiber failure for more than 30,000 lines for more than thirty minutes, and SS7 network failure for more than thirty minutes. In support for this recommendation, the Advocate noted that a similar system has been adopted by the Vermont Public Utility Commission through a Verizon – Vermont stipulation. *Id.* at 23. Ms. Alexander noted that “[t]hese are significant outages that should occur rarely or not at all.” *Ibid.*

iv. Access to Verizon (Metrics (9) Through (12))

In general, the Advocate contended that the metrics measuring access to VNJ’s business office and repair office were flawed because they were indirect measures of direct performance. RPA-39 at 20. Accordingly, the Advocate recommended the replacement of the current Access to Verizon metrics with an entirely new system. *See* RPA-39 at 23, and Exhibit BA-3. The Advocate recommended eliminating VNJ’s proposed (11), “Percent Directory Assistance Calls

⁷⁷ *See* RPA-39 at Exhibit BA-3, and “Retail Service Quality Standards Summary,” *supra*.

Answered Within Ten Seconds” and (12), “Percent Toll And Local Assistance Calls Answered Within Ten Seconds.” In addition, in place of VNJ’s proposed (13), “Percent Customers Having No Difficulty Reaching The Business Office For Both Residence And Business,” and (14), “Percent Customers Having No Difficulty Reaching Repair For Both Residence And Business,” the Advocate recommended its (9), a metric that included “Business Office Performance: Calls Answered Within Twenty Seconds,” together with a busy signal metric, and its (10) “Repair Office Performance: Calls Answered Within Twenty Seconds,” again together with a busy signal metric. The performance standard recommended by the Advocate is 80 percent with respect to calls answered within 20 seconds, for both (9) and (10). The Advocate explained that according to ARMIS data, VNJ can provide the “percentage of calls answered within 20 seconds” data. Id. at 23.

The Advocate’s proposal that the Board measure “busy signal” percentages in both the Business Office and the Repair Office, and the imposition of a baseline standard of 5 percent for both, is entirely new. Ms. Alexander testified that the busy signal for both the business and repair office call centers should be tracked in order to prevent the Company from increasing the busy signal in order to decrease the average hold time for customers who get through to the office. Ibid.

Finally, the Advocate recommended the adoption of metric (11), “Customer Complaints Per One Million Residential Access Lines,” and suggested a baseline standard of 200 customer complaints per one million lines. Ibid. Ms. Alexander noted that because ARMIS data indicated VNJ had a complaint ratio in 2000 of 400 complaints per million access line, its proposed baseline standard will require VNJ to take steps to substantially reduce the number of customer complaints. Id. at 24-25.

v. Penalties

In addition, the Advocate recommended the adoption of a system of “pre-established penalties or mandatory customer restitution” based upon “performance points” as a way to enforce its proposed service quality standards. Id. at 25-28. Under the terms of that proposal, a “deterioration” of 30 percent or more during a year from the “baseline” performance standard would result in a penalty of \$7,000,000, with fractional penalties to be imposed in a graduated

manner from \$750,000 for a small deviation from the standard, and increasing to \$7,000,000 for a “deterioration” of 30 percent during the year. Id. at 26-27. The Advocate’s recommendation contemplates a maximum penalty assessed against VNJ of \$77,000,000 per year, equal to \$7,000,000 for each of the 11 metrics proposed, based on its recommendation that 4% of VNJ’s almost \$2 billion intrastate jurisdictional revenues be at risk. Id. at 25. The Advocate’s proposal calls for the imposition of penalties automatically, as soon as deterioration below baseline standards occur. Id. at 25. Ms. Alexander testified that such automatic penalty regimes are “typical of what other states, including those in which Verizon operates, are now requiring as part of their alternative rate plans.” Ibid.

vi. Rebates

In addition to monetary penalties imposed for failure to meet performance standards for the various metrics, the Advocate proposed a customer rebate program providing a fixed fee or waiver of certain charges whenever VNJ fails to keep a customers appointment, fails to install service within the agreed upon installation date or fails to repair service within 24 hours (with an exception for major storm events or other publicly declared emergencies). Id. at 30-31. In addition, the Advocate recommended that VNJ should be required to offer customers one-half day appointments. According to the Advocate, the customer rebates should be provided automatically to affected customers without the need for a customer to request the rebate, and must be reflected in the Company’s tariff. Id. at 31.

vii. Reporting

The Advocate, through Ms. Alexander’s testimony, also recommended several changes to VNJ’s service quality reporting. The Advocate recommended that service results that are either independently verified by a third party or attested to by a senior officer be submitted annually to the Board, the Advocate and to other interested parties. RPA-39 at 28. The Advocate also urged the Board to require VNJ to annually report the results of its service quality and network reliability performance to its customers, including a full report on performance in all categories, as well as monetary restitution returned to customers. Ibid.

c. VNJ Response to the Advocate

i. Installation of Service

In general, VNJ contended, contrary to the Advocate arguments, that its service quality proposal was both comprehensive and new. VNJrb at 85-86. VNJ asserted that its proposal addressed every area of service quality covered by the Advocate's counterproposal, ensured parity with the Board's stringent Carrier-to-Carrier Guidelines, and contained new and more encompassing measurements of performance. Ibid. VNJ also noted that it proposed to "treble" its service quality reporting requirements, by reporting to the Board on a monthly basis, instead of the quarterly reporting now required. Id. at 87. The Company stated that its proposal would maintain and improve upon a "long standing excellent quality of service ... that has been praised by the Board, by the [Advocate] itself in 1997, and by the very witness upon whose testimony the [Advocate] relies in this proceeding."⁷⁸

VNJ also criticized the Advocate's proposed abandonment of the Board's two-tiered system of "exception" and "surveillance" levels of performance. VNJb at 58; VNJrb at 87-89. According to the Company, the Advocate's brief does not "justify the idiosyncratic service quality metrics and arbitrary standards proposed by its witness." VNJrb at 87. The Company described the current two-tiered system as one carefully designed to alert the Board in advance of potential service problems. Id. at 88. VNJ asserted that, in contrast, the Advocate's proposal is focused on making judgements about what has already occurred, based on standards that have "been met by some carrier somewhere at some time." Ibid.⁷⁹ VNJ characterized the Advocate's service quality proposal as a "solution in search of a problem." VNJb at 58.

With respect to the Advocate's (1), "Percent Service Order Provisioning Completed Within 5 Working Days" with a single baseline standard of 94%, VNJ claimed that the Advocate's only purported justification is that VNJ had met the standard at some point in the past. VNJb at 60. Such an adjustment, VNJ argued, would simply penalize VNJ for continued above-standard

⁷⁸ See VNJb at 52-57; VNJrb at 87, referencing RPA -39 at 14.

⁷⁹ See also VNJ-35 at 2.

performance in one of the most active communications markets in the country -- New Jersey. Ibid., citing VNJ-35 at 2.

With respect to the Advocate's (2), "Service Order Provisioning Appointments Met," VNJ argued that the proposed "baseline" of 99 percent is a standard that no other state in the former Bell Atlantic footprint has ever imposed, and that it has been inserted by the Advocate solely in order to generate penalties for failure to meet the baseline standard. Ibid., citing VNJ-23 at 8.

ii. Maintenance of Service

With respect to the Advocate's recommendations for its (3) "Customer Trouble Report Rate Per 100 Lines," VNJ argued that the Advocate's response to VNJ's "exemplary" service quality performance over the years in that area is to seek to punish it for its achievement, proposing to impose a "baseline" which, had it been in effect at the relevant times, would have subjected VNJ to millions of dollars of penalties. Id. at 61. VNJ argued that adoption of the Advocate's proposal would mean that excellent performance in a given area of service quality would automatically raise the bar for the service provider in the future, thus providing a powerful disincentive for that service provider to never achieve performance in excess of Board-ordered standards. Ibid. The Company noted that, in recommending her baseline standard, the Advocate's witness ignored the fact that the standards in effect for this category in Pennsylvania, Maryland, Delaware and Virginia are far more permissive than those that have been in effect in New Jersey. Ibid.

With respect to the Advocate's (4), "Out Of Service Troubles Cleared Within 24 Hours," VNJ argued that had the Advocate's "baseline" of 80 percent been in effect during the last six years, when VNJ's average performance in this category was 73.4 percent, VNJ would have forfeited millions of dollars in penalties -- for a problem that consumers are not complaining about. Id. at 62. VNJ also argued that the standards for this category that are in effect in the New England states most often cited by the Advocate -- Maine, Massachusetts, Vermont and New Hampshire -- are 70 percent, well below the standard proposed by the Advocate here. Ibid.

With respect to the Advocate's (5), "Average Local Service Repair Interval -- Repeats (Res.)," VNJ argued against the adoption of a new metric based solely upon repeat reports because

such a metric would narrow the Board's focus to a measurement that tracks trouble that happens to be on the same line as the trouble reported within the previous 30 days. Ibid. According to the Company, such a "repeat" report does not necessarily mean that the subsequent report is a repetition of, or even related to, the problem that occasioned the original report. Id. at 62-63. VNJ also argued that the Advocate's proposed metric has a subjective bias, namely, that a customer who had reported a recent trouble to VNJ might well be "more likely to report as a trouble a relatively minor problem." Id. at 63. Finally, VNJ argued that if this metric were to be adopted by the Board, VNJ would be induced to give preference in speed of service to an arbitrary class of consumers no more deserving of special attention than any other class. Ibid.

With respect to the Advocate's (6), "Commitments Met To Clear Troubles," VNJ argued that the new standard of 81 percent urged by the Advocate is not only unsupported in the record, it is also unnecessary, given the fact that VNJ has performed well with respect to this metric for many years. Ibid.

iii. Network Reliability

With respect to the Advocate's (7), "Dial Tone Speed Within Three Seconds," VNJ faulted the Advocate's proposal for failing to take into account the percentage of offices attaining the dial tone standard, but rather relying on an overall pass-or-fail measurement of all callers in the entire network obtaining dial tone within three seconds, thus providing less pertinent information than the current metric. VNJ-23 at 10-11, VNJb at 64-65. VNJ also argued that while the Advocate claims that some other states have used the proposed metric, it has offered no information on the performance of carriers under the alternative metric. Id. at 11. The Company asserted that the current metric was more practical because it recognized that the overall percentage reporting proposed by the Advocate might be skewed or misleading if its results include the total failure of one or more central offices, events that might result from a single human error or an act of God. VNJb at 64.

With respect to the Advocate's (8), "Service Reliability," VNJ argued that the standards recommended by the Advocate have been crafted without regard to the culpability, or lack thereof, on the part of VNJ. Under the Advocate's proposal it is of no significance whether VNJ

is responsible for outages or not. VNJb at 65; VNJ-23 at 11. VNJ argued that, under the Advocate's proposal, it would be automatically liable for substantial monetary forfeitures whatever the cause of the service interruption, albeit hundred year storms, criminal vandalism, acts of terrorism or acts of God. The Company contended that the automatic, no-fault nature of the Advocate's proposal rendered it both unfair and ineffective. Ibid. VNJ also noted that the Advocate produced no evidence that such a system was workable other than the example of Vermont, which is "[not] comparable to New Jersey in terms of history of performance, network complexity or demographics." VNJb at 65.

iv. Access to Verizon

With respect to the Advocate's (9), "Business Office Performance, Calls Answered Within 20 Seconds," and (10), "Repair Office Performance, Calls Answered Within 20 Seconds," VNJ noted that the data tracking VNJ's past performance in this regard show that, although calls answered within 20 seconds at the business call center have averaged 80 percent over the past six years, for two of those years performance has been significantly below 80 percent -- a situation that would have resulted in extraordinarily heavy penalties under the Advocate's penalty mechanism. Id. at 66. VNJ argued that, with respect to its repair call center performance, VNJ had averaged significantly less than the proposed baseline standard of 80 percent, and that if the penalty system had been in place over the last six years, VNJ would have incurred substantial penalties for four of those six years, "without any evidence that customers are dissatisfied with the current standards." Id. at 67. According to the Company, "a quality contact with a VNJ representative is far more likely to result in a satisfied customer than an arbitrary effort to 'beat the clock.'" Ibid. VNJ argued that, rather than seeking to monitor customer satisfaction, as the current metrics do through independent surveys contracted for by the Company, the Advocate's proposal is based on the unproven assumption that customers must be either satisfied or dissatisfied based only on whether their calls are answered within twenty seconds. Ibid.; VNJ-23 at 13.

VNJ also argued that there is no support for the Advocate's proposal that the Board should measure "busy signal" percentages in either the business office or the repair office, much less impose an "arbitrary" baseline of 5 percent for both. Ibid. Although Advocate witness Alexander makes the blanket statement that, because the incidence of busy signals for both offices has been at various times greater than 5 percent, VNJ must have "reduced the number of incoming

trunks so that customers get a busy signal rather than waiting in line for a live attendant at either call center,” there is no evidence to support this charge.⁸⁰

VNJ further argued that if there had been significant customer dissatisfaction in this regard, it would have been reflected in the customer satisfaction surveys taken by the independent company VNJ has employed for the past several years. VNJb at 68. VNJ noted that the Advocate’s plan reflects a preference for the administrative convenience of “all or nothing” measurement, and that there is no evidence that customers will be satisfied if their calls are answered within twenty seconds and dissatisfied if their calls are not answered within twenty seconds. VNJ argued that customer satisfaction and dissatisfaction is the proper goal of service quality, not “beating the clock,” and that the Advocate has presented no evidence, anecdotal or otherwise, that a twenty second response time is a critical measure of consumer satisfaction. Id. at 67-68.

With respect to the Advocate’s (11), “Customers Complaints Per One Million Residential Access Lines,” VNJ argued that Advocate witness Alexander, in asserting that customer complaints against VNJ have “risen dramatically in the last several years,” failed to acknowledge the “sharp” decrease in customer complaints that has taken place since VNJ reorganized its service team in 2000. VNJb at 68, referencing VNJ-23 at Attachment A. VNJ also argued that the Advocate proposal fails to distinguish among complaints, and that under this metric, it makes no difference whether a customer complaint is “repetitive, nonsensical or totally unjustified.” Id. at 68. Finally, VNJ argued that the Advocate’s proposal shows a lack of recognition that such a system could be used both by consumers as a threat in order to gain preference in service and by competitors of VNJ, who would have an incentive to encourage their own customers to lodge complaints against it in order to obtain a competitive advantage. Ibid.

v. Penalties

VNJ contended that the Board’s adoption of the Advocate’s proposal for imposing pre-established monetary penalties for failure to meet performance standards would be bad

⁸⁰ VNJb at 67-68, referencing VNJ-24, the Advocate’s Response to discovery request VNJ-50, in which the Advocate admits that “Ms. Alexander does not have any specific information about the design of the Verizon call centers or the number of trunks that serve the call centers.”

regulatory policy.⁸¹ VNJb at 69-70. The Company characterized the Advocate's penalty scheme as a confiscatory and anti-competitive administrative process, inconsistent with the fact that it has been providing high quality service under the Board's current system -- even in the Advocate's estimation -- for more than a dozen years. Id. at 70. VNJ further argued that adoption of such a penalty scheme would hurt competition in New Jersey because only a single service provider would incur these unreasonable costs. VNJ argued that the imposition of such a system is unnecessary, because the past instances of VNJ service quality deterioration have been adequately explained, namely, a "service team reorganization that had to be abandoned in 1999 and 2000; the occurrence of Hurricane Floyd in the fall of 1999; and the August 2000 work stoppage, whose effects lingered for months." Ibid. VNJ further argued that increases in competition would provide incentives to every carrier to provide service at higher levels of quality in order to maintain customers, further rendering a penalty system unnecessary. Ibid.

vi. Rebates

With regard to customer rebates, VNJ argued that the Advocate's recommendations are impractical. VNJ argued the customer rebate plan as proposed by the Advocate would require volumes of small billing adjustments whenever VNJ performed at less than a 100 percent level. Id. at 71. Such a proposal, VNJ argued, would be anti-competitive because the monies VNJ would expend tracking performance to conform to the rebate scheme and processing rebate amounts would hamper its efforts to be competitive with other providers and maintain the quality of its network. Ibid. Finally, VNJ pointed out a tariffed rebate program that requires allowances to local exchange, channel and access customers already existed, and was yet another reason for the Board to reject the Advocate's proposed customer rebate program. See VNJ-23 at 20, and Attachment B.

vii. Reporting

As noted above, in response to the Advocate's assertion that its service quality proposal was neither comprehensive nor new, VNJ pointed to the fact that its commitment to file service

⁸¹ We note that in the context of its efforts to gain both a favorable Board recommendation to the FCC regarding Section 271 compliance, and subsequently to obtain FCC authorization to provide in-region interLATA services in New Jersey pursuant to 47 U.S.C. §271, VNJ relied upon the existence of a self-executing financial incentive plan governing compliance with wholesale quality of service standards. See, e.g., VNJ 271 Reply Comments to the FCC in CC Docket No. 01-347 at 56 (VNJ states that the wholesale performance incentive plan subjects it to "potential liability that provides a meaningful and significant incentive to comply with the designated performance standards).

quality reports with the Board on a monthly, as opposed to quarterly, basis helps to ensure that VNJ will maintain high service quality. VNJ-23 at 19-20. The Company's witness, Ms. Bernadette Phillips, noted that VNJ "will now be required to provide monthly reports of its performance under the "exception level" and the "surveillance level," and will be required to take measures should it fall below either of these standards at any time. Id. at 19. Ms. Phillips also testified that the Company's service quality proposal also requires more detailed reporting regarding the clearance of service outage troubles. Id. at 20.

d. AT&T's Proposal

AT&T, the only party other than the Advocate to oppose the Company's service quality proposal, contended that VNJ's proposed PAR-2 plan did not include a comprehensive service quality plan. AT&Tb at 75. AT&T voiced its support for what it characterized as the "strengthening" of retail metrics as proposed by the Advocate. Ibid. However, AT&T criticized the VNJ service quality proposal because it does not include metrics for other services, such as special access, those services consisting of the provisioning of high capacity circuits used by large businesses and carriers that compete with VNJ. Id. at 75-76. AT&T pointed out that the New York Public Service Commission had recently strengthened the service quality standards related to Verizon New York's provisioning of special services, and urged the Board to do the same. Ibid.

In response, VNJ noted that special access services are already governed by "appropriate requirements" contained in existing tariffs. According to VNJ, a reconstitution of carrier-to-carrier metrics is not part of this proceeding. VNJrb at 91-92.

4. Discussion

The Board has carefully considered the record and the arguments of the parties regarding service quality standards. The Board FINDS that the current service quality standards, as modified and expanded herein, meet the 1992 New Jersey Act's requirement that VNJ's plan of alternative regulation contain a comprehensive program of service quality standards, with procedures for Board monitoring and review.

By way of background, we note that quality of service (QOS) standards for telephone companies have existed in New Jersey since 1978, and are memorialized in N.J.A.C. 14:10-

1.10. These standards, or thresholds of acceptability, and their underlying metrics, were originally defined by the National Association of Regulatory Utility Commissioners (NARUC) in 1976 through consideration of generally accepted industry design and operational standards, and are conceptually similar to QOS standards used in many states that have adopted quality standards.

As noted earlier, during the Board's consideration of New Jersey Bell's (NJB) proposal for a Rate Stability Plan in Docket No. TO87050398, the Board became concerned that the basic rate capping aspect of the RSP proposal could lead the Company to expense-cutting in a effort to maximize NJB's financial performance, to the possible detriment of NJB's service quality. RSP Order at 3-5. To guard against such a possibility, the Board appended monitoring thresholds to NJB's proposal, the violation of which would trigger automatic reports to the Board's Staff (in the case of an "exception" level violation) or a formal filing to the Board itself (in the case of a "surveillance" violation). The RSP QOS plan did not preclude Staff from bringing "exception" violations to the Board in the event that problem amelioration efforts with the Company were unsuccessful. In addition, in the RSP Order the Board clearly noted that "[a]ny degradation of service could result in significant punitive or corrective action by the Board including but not limited to a reduction in rate of return on equity permitted by the Board for [NJB's] Group II Services, or cancellation of the proposal." RSP Order at 4.

Subsequently, during the PAR-1 proceeding, the same basic concerns with respect to the possibility of service degradation due to the incentives inherent in incentive-based rate regulation for cost cutting by the Company were discussed. After hearing and deliberation, the Board opted to retain as part of PAR-1 the previously approved RSP QOS plan in toto, including the metrics, standards, exception and surveillance level monitoring thresholds and the Board's authority to take appropriate action, including termination of the plan after notice and hearing "in the event that a substantial degradation of service is found to exist by the Board." PAR-1 Order at 139-140.

The Board has actively monitored the Company's performance under the QOS plan first instituted in 1987 as a result of the RSP proceeding. The Board views VNJ's results under the initial years of the QOS plan as positive. This view has been reinforced by the Advocate's expert witness, who acknowledged that the Company had "performed reasonably well" in adhering to the service quality metrics and standards that were ordered by the Board, and that

VNJ's service quality is generally consistent with the performance expectations in other Verizon jurisdictions. See RPA-39 at 14, 16.

However, a careful examination by the Board of VNJ performance from 1988 through the first quarter of 2002 indicates that service quality has declined during the more recent years of the QOS plan. More specifically, for the four (4) year period from 1999 through 2002 (annualized), VNJ has experienced more than a three-fold increase in missed monthly exception level standards compared to the 11 year period from 1988 to 1998 inclusive. The reasons for this later-term deterioration may, in part, be due to events noted by VNJ, namely, a service team reorganization in 1999-2000, Hurricane Floyd in 1999, and a work stoppage in 2000. See VNJ-23 at 18. Nevertheless, whatever the reasons, they are secondary to the fact that the deterioration itself exists. The recent negative trend is of concern to the Board no matter what the reasons or explanations therefore.

However, when viewed from a 15-year perspective, both the QOS plan and VNJ's performance under the plan have convinced the Board not to significantly modify the existing metrics that have helped to produce (up to recently) a generally positive service quality performance by VNJ. The Board will continue to require that VNJ meet the 12 metrics originally defined through the RSP in 1987 and again approved by the Board in 1993 during the PAR-1 proceeding, including the geographic disaggregations. However, certain measures will be modified to include more stringent standards.

In addition, the Board believes that 3 of the 12 metrics should be updated and improved, that 8 metrics already existing as part of the FCC's ARMIS System should be adopted with their definitions for New Jersey, and that one new metric (BPU Complaints per 10,000 lines) should be added, for a total of 21 metrics. With respect to the 3 current metrics being updated and improved, we note our agreement with both VNJ and the Advocate to strengthen metric 2, "Percent Out Of Service Troubles Cleared Within 48 Hours" to reflect "Troubles Cleared Within 24 Hours." We will also change the current metric 11, "Percent Customers Having No Difficulty Reaching The Business Office For Both Residence And Business" to "Percent Customers Reaching The Business Office Within 20 Seconds For Both Residence And Business"; and the current metric 12, "Percent Customers Having No Difficulty Reaching Repair For Both Residence And Business" shall be changed to "Percent Customers Reaching Repair Within 20 Seconds For Both Residence And Business." We agree with the Advocate that direct

measurement of customers' ability to timely reach VNJ's business and repair offices is an improvement over the current metrics that measure customer satisfaction through the use of third-party surveys.

The annexed chart (Attachment B) sets forth the complete regime of 21 metrics and standards we herein approve. In view of the recent difficulties experienced by VNJ in meeting the current standards, and the fact that we are herein directing the Company to file service quality reports on a monthly, rather than on a quarterly basis, the Board views the existing "exception level" definition, whereby a violation requires VNJ to report only to Board Staff, to have outlived its relevance. Thus, with one exception, all new standards are synonymous with the RSP "surveillance level" definition, any violations of which will require a special filing with the Board that includes at a minimum, a technical root cause analysis, a corrective plan of action and a completion schedule. The one exception noted is with respect to metric 5, "Percent Service Order Provisioning Appointments Met," which will retain both an exception level and a surveillance level standard. The 8 newly adopted ARMIS metrics, and the new metric "BPU Complaints Per 10,000 lines" will have only surveillance standards.

We note again the Board's concern with the decline in VNJ performance with respect to the current 12 metric regime. We note also the recommendations of the Advocate and AT&T that the Board consider the imposition of monetary penalties, which would accrue to VNJ for missed standards and the modification of the time interval constituting a miss, or violation, from 3 months to 1 month. Concerning the former, the Board notes that a defined program of monetary incentive payments already has been adopted to encourage compliance with the metrics governing compliance with VNJ's wholesale operations (i.e., services VNJ supplies as an Incumbent Local Exchange Carrier to Competitive Local Exchange Carriers), and that a retail analog to that program might appear consistent to some, as well as logical. Nevertheless, the Board prefers a cautious approach to the issue of short-term performance deterioration, and believes that the impacts of the modifications to the service quality plan we herein approve, should be first evaluated before consideration of monetary incentive payments for VNJ retail services. The Board will monitor VNJ's service performance over the first 12 months following the effective date of the New Plan, i.e., July 1, 2002, under these more stringent metrics, and at that time, will determine what actions, if any, are necessary, consistent with its legal authority. Similarly, while the Board will require monthly reporting, we will not modify the time interval

constituting a miss from 3 months to 1 month. For the same reasons described above, we will monitor VNJ's performance prior to any such modification.

Performance results for VNJ's retail metrics will be filed with the Secretary of the Board by the 5th business day of the succeeding month after the monthly closing. In the event of any failure(s) by VNJ to achieve the Board's performance standards for any of the 21 metrics, VNJ shall file with the Secretary of the Board by the 15th business day of the succeeding month after said failure a comprehensive report setting forth in full VNJ's analysis of the failure(s), including non-technical and technical explanations for the violation(s), a root-cause-analysis for the failure(s) performed under the direct supervision of the Verizon⁸² operations officer(s) accountable for the metric[s], with attestation by such Verizon operations officer(s) of the completeness and accuracy of the report, a statement of intended remedial action to be taken by Verizon with estimated remediation dates, and a verified statement of acceptance, on behalf of VNJ, of the remediation plan and its target dates, and a commitment on behalf of VNJ that the remediation plan will be vigorously pursued to the best ability of the Company. We note that the performance standards and related reporting requirements that we herein adopt apply without exclusion for any reason. Factors that the Company believes to be related to its performance, including but not limited to seasonality, inclement weather, work stoppage, accident, acts of God or nature, sabotage or other events, may be included and fully discussed by VNJ in its reports to the Board, but shall neither excuse the Company from good faith efforts to comply with the performance standards, nor from reporting to the Board such compliance or lack thereof.

The Board shall continue to monitor the compliance of VNJ with the performance standards herein adopted. Should VNJ's performance results fail to meet or exceed these standards, the Board reserves the right to revise these standards as it may deem appropriate after affording the Company an opportunity to be heard with regard to such revisions. The Board also reserves the right to terminate the alternative regulation plan itself, after notice and an opportunity to be heard, should the Board determine that a substantial degradation of service exists. Accordingly, the Board APPROVES the quality of service plan, as modified and

⁸² The Board notes its understanding that Verizon Communications Corporation, parent of VNJ, is responsible for managing quality of service.

described herein, effective as of July 1, 2002, and modifies the Company's proposed PAR-2 to incorporate this quality of service plan.⁸³

G. Does the New Plan Specifically Identify the Benefits to be Derived?

N.J.S.A. 48:2-21.18(a)(8) requires that any plan for an alternative form of regulation specifically identify the benefits to be derived from the alternative form of regulation.

1. VNJ Position

VNJ asserted it had "plainly identified" the following as specific benefits of the implementation of its proposed PAR-2:

continuation of affordable rates, in particular rates for residential basic exchange service, which are among the lowest in the nation and will not be increased under PAR-2;

continuation of commitment to universal service with enhancements to Lifeline and associated Link-Up America programs, including expanded eligibility criteria, easier enrollment procedures, and an expanded customer outreach program;

continuation of economic development fostered by continued advanced infrastructure deployment under ONJ;

continuation and enhancement of benefits to schools and libraries under ANJ, including an expansion of the company's existing commitment by an additional \$20 million and the extension of the company's ANJ commitment through the year 2007;

continuation and refinement of a comprehensive program of service quality standards;

assurance that competitors are not disadvantaged or unduly prejudiced; and

promotion of efficiency by reducing regulatory delay and increasing incentives to innovate and invest in the network.

[VNJb at 34-35].

⁸³ The Board notes this service quality plan applies exclusively to VNJ and is not applicable to other incumbent local exchange carriers or to competitive local exchange carriers operating in the State. However, the extent of the plan's applicability may be reconsidered by the Board in the future following an analysis of competitive market conditions for wireline residence local telephone service in the State.

VNJ further maintained that additional benefits would flow from the implementation of its proposed streamlined process for introducing new services, claiming that, while consumers will receive more services in a quicker timeframe, the rates for these services will continue to be subject to Board oversight, ensuring that consumers are protected. Id. at 35.

In response to AT&T's and WorldCom's claims that PAR-2 provided no new benefits, VNJ argued that the claims are "legally irrelevant and factually incorrect." VNJrb at 60-62. VNJ asserted that the purpose of this proceeding is to review its PAR-2 proposal in light of the statutory criteria, and not contrast or compare it with the current PAR-1. Id. at 60. VNJ stated, moreover, that the continuation of the nation's lowest RBES rates is much more than a "left-over" benefit from PAR-1. Id. at 61. VNJ argued that the Board has already made clear that a plan proceeding is not a forum for the review of other possible plans. Ibid., citing the PAR-1 Order at 14. VNJ disputed the relevance of AT&T's claim that that VNJ had failed to account for the subsidy from Directory Advertising, stating that customers continue to benefit from the subsidy because it is built into the unchanged residential rates. Id. at 61. In response to AT&T's claim that VNJ had failed to show how, under PAR-1, it was prohibited from introducing a new service or pricing that would have benefited customers, VNJ pointed to several services that were approved by the Board a year or more after VNJ had petitioned for their approval. Id. at 62, referencing AT&Tb at 78, and the VNJ response to the Advocate's discovery request, RPA-325. VNJ asserted that these examples demonstrated the benefit of PAR-2's streamlined methodology for introduction of new services. Id. at 62.

2. AT&T Position

AT&T alleged that VNJ's PAR-2 fails to: (1) provide any new benefits to customers, (2) provide any benefits in the form of efforts to open the local markets to competition, or (3) demonstrate that VNJ needs the additional benefits beyond the PAR-1 that AT&T contends VNJ provides to itself in PAR-2. AT&Tb at 76-77. According to AT&T, VNJ does not make any new commitments to further upgrade facilities beyond its ONJ commitment. Id. at 77. AT&T also criticized VNJ for taking no action in PAR-2 to encourage the development of local competition. Ibid. AT&T argued that PAR-2, rather than provide additional benefits to customers, is structured to provide additional financial benefits to VNJ. Id. at 78-79.

3. WorldCom Position

WorldCom argued that PAR-2 actually removes the “substantial” benefits found by the Board in the PAR-1 Order, specifically citing the absence of a rate cap, adjustment mechanism, earnings sharing, and a termination date. WCb at 15; WCrb at 9. In addition, WorldCom asserted that the benefit of affordable rates is not ensured under PAR-2 because VNJ can, at will, modify or terminate the plan, file for a rate increase, or file a new plan with rate increases for regulated services. WCb at 16. According to WorldCom, instead of providing a benefit, VNJ’s proposed streamlined process to introduce new services and change the pricing of existing services will create additional regulatory burdens. Ibid. WorldCom further alleged that because PAR-2 does not address outstanding local competition issues and measures to open the local exchange market, the New Plan neither enhances economic development nor provides assurances that competitors are not disadvantaged or unduly prejudiced. Ibid. WorldCom also argued that PAR-2’s revenue neutral rate restructure provisions allowing such rate changes to go into effect after 90 days without prior Board approval removes the benefits and safeguards customers and competitors had under PAR-1. WCrb at 10.

4. Discussion

The Board FINDS, based on a thorough review of the record, that PAR-2 satisfies the requirements of N.J.S.A. 48:2-21.18(a)(8) that it specifically identify the benefits to be derived from its implementation. We further FIND that the eight separate categories of benefits articulated by VNJ constitute specific identifiable benefits, which separately and collectively meet the Act’s mandate. Additionally, we agree with VNJ that the benefits that it has identified accrue to customers and competitors, as well as the State, and not primarily to the Company itself, as alleged by AT&T. For the reasons discussed above, we reject the arguments of AT&T and WorldCom regarding local competition issues. We also reject the arguments of AT&T and WorldCom which would have the Board improperly focus on the identification of benefits that those parties believe the plan should contain, such as structural separation, a rate cap, earnings sharing, or a fixed plan termination date, rather than the real benefits that accrue from the plan. We note, finally, that the plan we herein approve is a modified plan that preserves the requirement of prior Board approval of revenue neutral rate restructures and expands and strengthens service quality standards and the reporting thereof. As we already indicated, the

Board considers this improved service quality regimen a major additional benefit that flows from the modified plan we herein approve.

H. Is the New Plan in the Public Interest?

N.J.S.A. 48:2-21.18(a)(5) requires that a plan for alternative regulation be in the public interest.

1. VNJ Position

According to VNJ, “[t]he public interest is at the heart of why the 1992 Act was passed by the New Jersey Legislature,” which found that “alternative regulation was superior to traditional utility regulation and was in the public interest.” VNJb at 36, quoting from its witnesses at 4T1107. VNJ argued that the proposed PAR-2 prudently maintains the appropriate balance between price controls for non-competitive services and flexibility, subject to safeguards that preclude anti-competitive behavior. Ibid. In addition, VNJ asserted that PAR-2 retains and expands infrastructure commitments, strengthens the Company’s commitments to universal service by expanding the Lifeline and Link-Up America programs, and ensures affordable and reasonable rates. Ibid., referencing VNJ-10 at 19-20. VNJ contended that these aspects of its PAR-2 proposal demonstrated the incorrectness of AT&T’s and MCI’s claims that the basis of the Company’s claim that PAR-2 was in the public interest was its contention that the New Plan met the other statutory criteria. VNJrb at 59. According to VNJ, the adverse parties err in confusing the criteria for evaluating a plan of alternative regulation with the Board’s separate determination of the terms and conditions governing local competition, which are the subject of other proceedings. VNJb at 36. VNJ also noted that it is obligated to comply with federal and State local competition orders, “regardless of what, if anything, PAR-2 explicitly states about local competition.” Ibid., quoting from VNJ-12 at 35. With regard to AT&T’s claim that the proposed New Plan would harm the public interest, VNJ argued that its request to reclassify multi-line businesses services would only be granted if the Board thought that such reclassification was appropriate. Therefore, according to VNJ, AT&T’s claim that reclassification “undermined” the public interest was “illogical.” Ibid.

2. AT&T Position

AT&T argued that a Board finding that the plan is in the public interest is an independent requirement. AT&Tb at 72. AT&T contended that this is consistent with principles of statutory construction that require interpretation of a statute to give effect to all statutory provisions and not render any language inoperative, superfluous, void or insignificant.⁸⁴ AT&T argued that VNJ presented no independent evidence that the distinct public interest test is satisfied. Ibid. According to AT&T, VNJ has not proposed a plan in this proceeding or made commitments to invest in facilities similar to the provisions that it proposed and the Board approved in PAR-1. Ibid. AT&T further claimed that PAR-2, if approved, would in fact harm the public interest, and reclassifications of more than 40 business services as competitive, would give VNJ “unfettered freedom to raise rates.” Id. at 72-73. AT&T also contended that PAR-2 would “thwart the Board’s goal of a competitive intraLATA toll business market” and “[fails to] facilitate the development of competitive local exchange and access markets.” Id. at 73. AT&T argued that, rather than creating an appropriate regulatory balance, PAR-2 “would eviscerate” the Board’s ability to regulate VNJ because it ignores local competition issues, continues VNJ’s access windfall, “treats regulated services as competitive services prior to Board approval,” and allows revenue neutral rate restructures without prior Board approval. AT&Trb at 52-53.

3. WorldCom Position

WorldCom also charged that PAR-2 is not in the public interest because the plan failed to include provisions to further open the local market. WCb at 16. In addition, WorldCom, like AT&T, accused VNJ of basing the plan’s satisfaction of the public interest requirement on its purported compliance with the other seven criteria of N.J.S.A. 48:2-21.18. Ibid. WorldCom also contended that because the Company had, in fact, not met the requirements of N.J.S.A. 48: 2-21.18 (a)(2), (3), (4), (6) and (8) it was not in the public interest. Ibid.; WCrb at 9-10.

4. Positions of Other Parties

XO contended that the proposed PAR-2 is not in the public interest because it favors VNJ over other qualified carriers for school and library services in New Jersey. XOb at 6. XO urged the

⁸⁴ Ibid., citing G.J. v. Dept. of Human Servs., 157 N.J. 161, 172 (1999).

Board to quickly develop and implement a New Jersey USF program that uniformly addresses the services and funding needs of the State's school and libraries. According to XO, by not establishing a State USF, the Board has forced the educational community in New Jersey to depend on the largesse of VNJ, when other competing carriers, such as XO, are ready, willing, and able to provide services to schools and libraries, including areas served by Sprint and Warwick Valley Telephone, but cannot due to their inability to compete with the Company's ANJ pricing. Ibid.

The New Jersey Cable Telecommunications Association argued that VNJ's proposed plan fails to meet the public interest criterion because it has no fixed termination date, allows VNJ unnecessary regulatory flexibility, and provides the Board and parties with less information than currently required. CTAb at 45-47.

5. Discussion

The Board FINDS that PAR-2, as modified herein, is in the public interest. In satisfying the requirements of the Act, VNJ's proposed plan, as modified, provides specific benefits to the State and its citizens. The New Plan ensures affordable and reasonable rates going forward, particularly in light of the Board's continuing oversight over any future rate changes. The New Plan strengthens VNJ's commitments to universal service by expanding substantially the current Lifeline program. PAR-2 retains and augments infrastructure commitments, and provides substantial benefits to the State's educational system as a result of both the equipment made available under ANJ and the rates available through 2014. These benefits are real and reasonably support a finding that the New Plan, as modified herein, is in the public interest. In arguing that the public interest requirement is independent of the other seven statutory criteria laid out in N.J.S.A. 48:2-21.18(a), AT&T and WorldCom err in suggesting that any analysis of the effect of the proposed plan on the public interest that considers the other criteria violates principles of statutory construction. AT&T and WorldCom fail to demonstrate why any reliance on the Board's finding with respect to the other seven criteria is contrary to the legislative objectives of the Act. The Act's plain language indicates that

It is the policy of the State to ... permit the [B]oard the authority to approve alternative forms of regulation in order to address changes in technology and the structure of the

telecommunications industry; to modify the regulation of competitive services; and to promote economic development.

[N.J.S.A. 48:2-21.16a].

The Act also sets forth the Legislature's declaration that

[i]n a competitive marketplace, traditional utility regulation is not necessary to protect the public interest and that competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation.

[N.J.S.A. 48:2-21.16b(1)].

The prefatory statements in the Act both indicate that alternative regulation is in the public interest in certain circumstances, and link that public interest with the promotion of economic development and efficiency, the reduction of regulatory delay and the fostering of productivity and innovation. It is thus not inconsistent with any interpretation of the public interest requirement in the Act to consider whether a plan meets clearly spelled out criteria that the Legislature itself links so closely with the public interest.

Moreover, in its consideration of PAR-1, the Board previously based its finding that PAR-1 was in the public interest on the fact that PAR-1 provided for an accelerated deployment of a technologically advanced telecommunications network in the State, and instituted an incentive regulatory plan approach which would ensure both reasonable and affordable rates, as well as the promotion of corporate efficiency. PAR-1 Order at 143. The Board indicated that the public interest issue was "primarily addressed by the parties as part of their comments on other issues." Ibid. Thus, the Board has previously relied on its assessments of a plan's compliance with the seven other statutory criteria in judging whether that plan was in the public interest. And the Board's determination that PAR-1 was in the public interest was affirmed by the Appellate Division. In re Application of New Jersey Bell, supra, 291 N.J.Super. at 77.

Accordingly, we reject AT&T's and WorldCom's claims that basing a "public interest" showing on the fact that PAR-2 satisfies the other seven criteria set forth in the Act is not allowed by law. We FIND that PAR-2 is clearly in the public interest, based on its many benefits to the State and its citizens, all of which have been discussed above. We also reject AT&T's and WorldCom's arguments regarding the shortcomings of PAR-2, as modified, with regard to issues of local

competition. As already noted, local competition issues have been and are being specifically addressed by the Board in several other docketed proceedings. VNJ is obligated to adhere to the Board and FCC Orders in local competition proceedings related, inter alia, to UNE rates, terms and conditions, Carrier-to-Carrier Guidelines and the related Incentive Plan, network access requirements and other local exchange competition requirements. It is therefore unnecessary to have each of those issues included as express provisions of this plan. However, in recognition of the Company's local exchange competition responsibilities, we DIRECT that PAR-2 shall contain an acknowledgement that VNJ is subject to all federal and State statutory and regulatory requirements related to local exchange competition, and nothing in PAR-2 shall supersede those requirements. We also reject the arguments of XO regarding ANJ and a state USF program, for the reasons already discussed. Finally, for the reasons noted above, we also reject NJCTA's criticisms of PAR-2 with regard to the public interest.

I. The Expansion of Local Calling Areas and the Collapse of Toll Bands

1. VNJ Position

In response to the Board's directives, as part of its PAR-2 filing VNJ provided an analysis and recommendations with respect to several alternate scenarios for the geographic expansion of local calling areas and the collapsing of toll bands, providing in each case "the cost of the expansion, the number of access lines included in each new calling area and the expected rate of impact to consumers."⁸⁵ Scenario 1 would have eliminated toll band 1 (0-10 miles) and established a single statewide rate for basic residence service and a single rate for basic business service. Scenario 2 would also have eliminated toll band 1, but would have established two rate groups for residential service and two for business service. Scenario 3 is the same as Scenario 1, except that it would also eliminate toll band 2 (11-15 miles). Scenario 4 is the same as Scenario 2, except that it would also eliminate toll band 2.⁸⁶ VNJ determined that, based on the rates that were in effect as of December 2000, including toll service, expanding local calling areas on a break-even basis "would increase residential basic exchange rates to as much as \$12.80 and business rates to \$13.37, net of other changes resulting from the elimination of intraLATA toll mileage bands." VNJB at 46.

⁸⁵ See the December 22, 2000 Order at 6.

⁸⁶ The Company's local calling area analysis is set forth in VNJ-10 at 27-30, and Exhibit 7. See also VNJ-12 at Attachment A.

VNJ maintained, however, that the expansion of local calling areas and the collapse of toll bands is inappropriate. Moreover, with regard to the Advocate's proposal, VNJ and AT&T both contended that there are more effective methods, such as local number portability and number pooling, to conserve telephone number resources than rate center consolidation, as proposed by the Advocate.⁸⁷ VNJ also noted that it presently offers a wide variety of optional (intraLATA) toll calling plans (OCPs), which, VNJ asserted, meet the varying calling needs of its customers. VNJ recommended that the Board consider OCPs as the way to address the State's local calling issues, and "reject the 'one-size fits all' approach represented by the expansion of local calling areas."⁸⁸ VNJ stated that should the Board, nevertheless, choose to embark upon the expansion of local calling areas and/or the consolidation of rate centers, all associated costs and revenue impacts must be recovered, and the Board must give appropriate consideration to "consolidation of rate groups, implementation time frames and the effect of such a change on Independent Telephone Companies' and CLECs' local calling areas." Id. at 45.

VNJ noted that historically New Jersey's local calling areas have been relatively small, and therefore carriers have relied heavily upon the profitability of intraLATA toll services. Ibid. VNJ asserted that if the Board changed this historical structure, substantial rate structure changes would be required, for a number of reasons. VNJ argued that expanded local calling areas would dramatically change the economics of providing basic exchange service for both carriers and customers, and the recovery of revenue losses and implementation costs through increased RBES rates would be necessary to offset decreases in intraLATA toll billing. VNJ also noted that reducing intraLATA toll revenues without rate structure changes would "negatively impact competitors previously attracted to the New Jersey toll market, without providing those providers any increased opportunity to compete for this revenue in the local exchange marketplace." Id. at 45.

VNJ asserted that the Advocate's proposal would harm the shareholders of all intraLATA toll competitors, and ultimately harm consumers as well by substantially reducing the level of intraLATA and local competition. VNJrb at 64.

⁸⁷ Id. at 44, 50-51; AT&Tb at 80.

⁸⁸ Id. at 44, citing VNJ-10, Exhibit 7 at 1.

The Company charged that the Advocate's county-based local calling area proposal was "simplistic" and did not take into account New Jersey network configurations. VNJ pointed out that the Advocate's proposal "would require significant network reconfiguration as well as extensive modifications to [VNJ] and customer switching equipment and operating support systems, and to [VNJ] contracts with other carriers and customers," and would require other LECs and CLECs to modify internal rating and billing systems and add local calling facilities due to the increase in local calling volumes over many intercompany routes.⁸⁹ The Company also contended that the county-based approach, which would require massive and costly network rearrangements caused by the fact that switches serve geographic areas that are not consistent with political subdivisions and also by the fact that ten New Jersey counties traverse LATA boundary lines, would also lead to substantial confusion and telephone number changes for some customers. Id. at 50.

2. Advocate Position

The Advocate claimed that only its local call area expansion plan would both maintain existing local rates and expand local calling areas. RPA at 52-53. According to the Advocate, VNJ's four local calling area expansion scenarios were "implausible." The Advocate criticized VNJ for evaluating these four options only on a "break-even basis," that is, with the assumption that any intraLATA toll revenue losses must be offset by equivalent gains in local exchange revenues. Ibid.

The Advocate proposed that the Board expand local calling areas by reducing the number of rate centers in New Jersey from 180 to 21, each based on county borders (unless a county crosses a LATA boundary). Id. at 54. The Advocate suggested that the new local calling area for each rate center should be all exchanges in the county that contains the rate center, plus all exchanges in any contiguous counties (again excluding any exchanges that cross LATA boundaries). The Advocate argued that its claimed \$148 million in VNJ merger savings and excess earnings could be returned to consumers through the reduction of intraLATA toll charges, and the existing rate of \$8.19 for basic residential service could be maintained. Ibid.

⁸⁹ VNJB at 49-50, quoting from VNJ-12, Attachment A at 5-6.

The Advocate asserted that VNJ's use of a revenue-neutrality assumption was completely arbitrary because nowhere in the December 22 Order did the Board require that only plans that are revenue neutral for VNJ be examined. Id. at 55. The Advocate claimed that its local calling area expansion plan, in contrast to VNJ's, is designed and intended to be implemented with the primary purpose of benefiting New Jersey citizens, rather than only VNJ shareholders. The Advocate asserted that by reducing the number of rate centers to 21, its plan would result in the return of considerable intraLATA toll costs to ratepayers. Id. at 55-56.

The Advocate contended that, as part of an overall plan of alternative regulation for VNJ, its proposal for expanding local calling areas would resolve many of the problems associated with the State's small local calling areas. Id. at 56. The Advocate noted that while the \$8.19 rate for residential stand-alone dial-tone service is the lowest of any state in the country, this low rate is significantly offset by the high intraLATA toll charges paid by New Jersey residential subscribers. The Advocate also noted that intraLATA toll charges in New Jersey are the sixth highest in the United States and the intraLATA toll market in New Jersey is the fourth largest in the United States.⁹⁰ The Advocate claimed that the disparity between small local calling areas and large intraLATA toll markets impedes the development of residential local exchange competition. By implication, according to the Advocate, consolidating rate centers and expanding local calling areas will facilitate the development of competition in the residential local exchange market in New Jersey. Id. at 57. The Advocate contended that counties are an appropriate basis for the proposed new local calling areas expressly because they are well understood by New Jersey consumers and would thus eliminate customer confusion regarding toll billing. Id. at 57-59.

The Advocate argued that the Board should also endorse rate center consolidation because, by promoting number conservation, rate center consolidation will alleviate telephone number exhaust and the need for new area codes. The Advocate contended that reducing the number of rate centers in New Jersey to 21 would drastically reduce the quantity of telephone numbers

⁹⁰ Id. at 56-57, referring to Application by Verizon New Jersey for Authorization to Provide In-Region, InterLATA Services in New Jersey, Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey, CC Docket No. 01-347 (filed Dec. 20, 2001) at 85.

that a local exchange carrier would need to provide service throughout the State. The Advocate asserted that its proposal would continue the number conservation efforts of the Board. Id. at 60. The Advocate estimated that its plan would conserve 1.59 million telephone numbers. Id. at 61. According to the Advocate, by conserving telephone numbers, its plan would also reduce, or perhaps eliminate, the need to deploy additional area codes in New Jersey, thereby avoiding the costs of upgrading facilities and systems to implement additional area codes. Id. at 62-63.

The Advocate contended that VNJ seeks to maximize its intraLATA toll revenues by maintaining small local calling areas. The Advocate asserted that high intraLATA toll charges suppress the use of communications services and thus inhibit economic and social activities associated with the use of such service. Thus, according to the Advocate, the expansion of local calling areas would benefit the State's economy. Id. at 63.

The Advocate claimed its plan was fair to VNJ because it provides for the return to ratepayers of only one-half of the merger savings and the reduction of local calling areas to 21 only. The Advocate claimed that its plan recognizes that VNJ's intraLATA toll revenues comprise much of its revenues from RBES customers, and the proposed twenty-one (21) local calling areas would still continue to generate significant intraLATA toll revenues for the Company. Id. at 63-64.

The Advocate asserted that, in contradiction to VNJ's position, local calling areas are not required to be defined by population. According to the Advocate, throughout the country there is no direct correlation between population and local calling areas. Id. at 64.

Further, the Advocate contended that VNJ's claim that population increases within existing local calling areas warrant keeping local calling areas small is without merit, and that populations have increased within toll areas just as they have within local calling areas. Ibid.

Finally, the Advocate asserted that VNJ's argument that the Advocate's rate center consolidation plan would be difficult to implement or prohibitively expensive is without merit. The Advocate contended that VNJ does not substantiate its claim that the Advocate's plan would necessitate changes to VNJ's network and those of interconnecting CLECs. According to the Advocate, by offering optional calling plans VNJ is already essentially providing residential

consumers with larger local calling areas, but for a fee. The Advocate argued that with the majority of VNJ's residential toll customers already using OCPs, much of the alleged reconfiguration work necessary to implement larger local calling areas must have already occurred as a prerequisite to such offerings. Id. at 64-65.

3. AT&T Position

AT&T argued that the Advocate's proposal should be rejected because it would have "dramatic negative impacts" on local exchange and toll competition, and would therefore conflict with established Board policy to promote competition in the local and intraLATA toll markets. According to AT&T, the Advocate's proposal would take residential traffic from the competitive intraLATA toll market and move it to the local calling market where, it alleged, no meaningful competition exists. AT&Tb at 79-80. AT&T maintained that the Advocate's proposal could not be considered since it did not offer any evidence of the revenue losses that would be suffered by competitive toll carriers other than VNJ. Id. at 81.

4. VNJ Response

In response, VNJ declared that its decision to file a "revenue neutral" proposal was entirely consistent with the terms of the Board's Order, and asserted that the Advocate is utterly silent as to how that "reasonable" requirement is in any way inconsistent with the Board's December 22 Order. VNJ also claimed that the Advocate's premise for "taking" revenues is baseless and contrary to the findings of the Board's independent financial review. VNJrb at 65.

VNJ asserted that the Advocate's position that the "substantial" costs for reprogramming, contact personnel costs, billing system modifications and customer notification should be borne by VNJ because of alleged overearnings is baseless and contrary to the findings of the Board's independent financial review which noted that, in general, VNJ's earnings on rate-regulated services have remained well below the earning sharing threshold that was established in PAR-1 in 1993.⁹¹ VNJ maintained that its returns reported annually to the Board never exceeded the

⁹¹ VNJb at 47, citing the Final Report of the Financial Integrity of Verizon New Jersey, Liberty Consulting Group (October 19, 2001) at 10-11.

13.7% return for intrastate rate-regulated services that the Board has established as a threshold for earnings sharing.⁹²

VNJ contended that the Advocate's proposal is largely premised on a flawed analysis of national intraLATA toll rates. According to the Company, the Advocate suggested drastic expansion of New Jersey's local calling areas because New Jersey has high toll rates compared to certain other states, a circumstance that must be considered in the context of the history of the Board's public policy rate-making. According to the Company, one must bear in mind the value customers receive from both intraLATA toll and local exchange services, and consider the fact that New Jersey's low flat rate residential basic exchange service is supported by profitable intraLATA toll service. Id. at 48.

VNJ also noted that the Advocate's comparisons of the effective monthly rate for business customers under VNJ's proposal versus current rates are wrong. According to VNJ, the Advocate incorrectly applied a \$0.65 monthly credit and \$1.00 charge for Touch-Tone service to the current rates for business message rate service, when VNJ's tariffs provide that the monthly credit only applies to single-line business customers, and the monthly Touch-Tone rate for business is \$2.01. VNJ argued that the Advocate's suggestion that business rates under VNJ's proposed plan would be "lower than those in effect today" is also wrong because it fails to consider the fact that current business rates include an allowance of 75 free local message units, while that allowance is eliminated under VNJ's proposal. Id. at 46-47.

Finally, VNJ noted that the Advocate ignored the fact that the Board's current number pooling program provides that telephone numbers are assigned in 1,000 number blocks in several area codes in New Jersey, rather than 10,000 blocks. After correcting for this error, the 1.59 million telephone numbers which the Advocate claims would be conserved under its plan might be as few as 159,000 per CLEC.⁹³

⁹² Id. at 47, referring to VNJ-18 at 16.

⁹³ VNJrb at 65, referring to Decision and Order, I/M/O Implementation of Numbering Resource Optimization Through Thousands-Block Number Pooling in Each of New Jersey's 201, 973, and 732 Area Codes, Docket No. TX01050313 (May 9, 2001).

5. Discussion

Having carefully reviewed the analyses of local calling area expansion and toll band collapse provided by VNJ in compliance with our December 22, 2000 Order, and having carefully considered the arguments of the parties, and taking particular note of the comments of affected parties such as AT&T, the Board FINDS that required expansion of the Company's local calling areas is not in the best interests of the State's telecommunications services customers or providers. Accordingly, for the reasons that follow, we REJECT the local calling area and rate center consolidation proposals of the Advocate.

The Board notes at the outset that, in our December 22, 2000 Order, our requirement that VNJ provide with its PAR-2 filing an analysis of local calling area expansion, including costs and impacts on customers, included no assumptions or constraints upon the Company with regard to revenue neutrality as suggested by the Advocate. VNJ's four-scenario analysis comported satisfactorily with the Board's December 22, 2000 Order directive.⁹⁴

The Board agrees with VNJ and AT&T that local calling area expansion and the collapse of toll bands would have significant negative impacts on New Jersey's intraLATA toll and local exchange markets. Expansion of local calling areas, by definition, means a commensurate contraction of toll calling bands and a redirection of toll revenues into the local exchange market. The State's intraLATA toll market, declared competitive in 1995,⁹⁵ would undoubtedly become less attractive to competitors were the potential revenues in the market to significantly decrease.

We also note that the restructuring of local calling areas, especially in the county-based manner proposed by the Advocate, could not be accomplished without significant expenditures related to extensive reconfiguration of network physical plant, extensive switch reprogramming and billing modifications, and substantial customer re-education. We reject the Advocate's

⁹⁴ The Board questions the timeliness of this argument. We note that, on February 26, 2001, the Advocate filed a Motion for Clarification, which charged that VNJ's February 15, 2001 filing failed to comply with the terms of our December 22, 2000 Order. Although the Advocate took the opportunity in its motion to question the sufficiency of the Company's filing with regard to ten (10) issues and urged the Board to require VNJ to file additional or revised information on each issue, the Advocate failed to include a request in that motion that the Board direct the Company to revise its local calling area analysis because it had assumed a revenue neutral outcome. See the Order of Approval in this Docket dated June 20, 2001.

⁹⁵ See Order Approving Presubscription and Proposal of Rules, I/M/O the Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis, Docket No. TX 94090388 (December 14, 1995).

arguments that such costs should be borne by the Company based upon alleged overearnings that the Board's financial consultant, Liberty Consulting Group, found not to exist. And we are not persuaded by the Advocate's number conservation arguments for largely the reasons stated by both VNJ and AT&T, namely the existence of number portability and number pooling.

Accordingly, based upon the arguments of the parties and the reasons set forth above, the Board shall not require that local calling area expansion be made a part of the Company's plan for an alternative form of regulation.

J. Merger Savings

1. Background

In the Board's December 22, 2000 Order, we directed VNJ to submit a "detailed quantification of the savings resulting from the 1997 Bell Atlantic/NYNEX merger and the 2000 Bell Atlantic/GTE merger, and a plan for the distribution of the merger savings to customers, in the event the Board orders such a distribution." See the December 22, 2000 Order at 5-6. The February 15, 2001 direct testimony of VNJ witness Edwin F. Hall (VNJ-16) addresses VNJ's savings and expenses attributable to the Bell Atlantic/NYNEX and Bell Atlantic/GTE mergers as well as the Company's financial performance. This testimony was updated on April 3, 2001 (VNJ-17) to provide "actual savings and cost data for year 2000 for both the NYNEX and GTE mergers." VNJb at 131. Mr. Hall's rebuttal testimony (VNJ-18) was filed on June 15, 2001. In his Supplemental Testimony dated September 4, 2001 (VNJ-19), Mr. Hall provided "revised estimates of the Bell Atlantic/GTE savings and costs." *Ibid.* The May 15, 2001 direct testimony of James A. Rothschild (RPA-36) provided the Advocate's quantification of merger savings and its recommendation for a sharing of those savings with ratepayers. Corrections to this testimony were filed on November 9, 2001.

2. VNJ Position

VNJ stated that at the time of the Bell Atlantic/NYNEX merger in August 1997, Bell Atlantic identified three types of expense savings opportunities in the new entity: eliminating redundant functions; increasing economies of scale; and adopting the most efficient business methods or "best practices." VNJb at 132; VNJ-16 at 6. Mr. Hall initially presented evidence of the

calculated savings from the date of the NYNEX merger (August 1997) through year-end 1999. Ibid.; VNJ-16 at 8. In his Update Testimony, Mr. Hall then provided current information including merger savings and costs for the Bell Atlantic/NYNEX merger for the year 2000. Ibid. According to VNJ, the net intrastate rate-regulated savings attributable to VNJ for the year 2000 were approximately \$67 million. Ibid. VNJ asserted that year 2000 data were determined and verified in the same manner as described in Mr. Hall's February 15 testimony with respect to 1997 through 1999. Id. at 133. VNJ submitted that the calculations of savings for 1997 through 2000 were based on actual results, and costs were apportioned to intrastate rate-regulated operations by applying the same composite factor used to apportion merger savings to intrastate rate-regulated operations, and were consistent with fundamental matching principles of accounting. VNJb at 133-135. According to VNJ, total estimated merger costs attributable to VNJ's intrastate rate-regulated operations from 1997 through 1999⁹⁶ were \$13.3 million, \$13.7 million and \$13.5 million, respectively. VNJb at 135; VNJ-16 at 12. According to the Company, total merger savings for 1997 through 1999 were \$7.9 million, \$27.9 million and \$45.8 million respectively, and the net merger savings (savings minus costs) for those years were (\$5.4 million), \$14.2 million and \$32.3 million respectively. See VNJ-16 at 12, and Exhibit C-3.

With respect to the GTE merger, Mr. Hall explained that representatives from Bell Atlantic and GTE prepared preliminary estimates of savings opportunities prior to the announced merger. VNJb at 135. VNJ indicated that this preliminary estimate was validated after merger announcements by a group known as the "August 21 Group" that was "charged with preparing a more detailed analysis." Ibid. According to the Company, the August 21 Group confirmed the preliminary estimate of \$2 billion in expense savings Verizon wide, resulting from the Bell Atlantic/GTE merger. Ibid. VNJ indicated that, as with the Bell Atlantic/NYNEX merger savings, the general types of cost-saving opportunities resulting from the Bell Atlantic/GTE merger involved "the elimination of redundant functions, increased economies of scale and adoption of 'best practices.'" Id. at 136. According to the Company, the August 21 Group attributed \$800 million of a total projected savings of \$2 billion to lines of business unrelated to the provision of services by the operating telephone companies (OTCs), such as wireless services, long-distance services, Internet access, hosting services, video and out-of-franchise local exchange services. Ibid. In his September 4, 2001 supplemental testimony, Mr. Hall explained that the

⁹⁶ VNJ stated that 1999 was the end of the cost incurrence period. VNJb at 135.

portion of merger savings attributable to the OTCs had declined from \$1.2 billion to \$900 million. Id. at 136-137.

According to VNJ, based in part on Bell Atlantic's experience in the NYNEX merger, the August 21 Group estimated that it would take three years to achieve the full amount of the Bell Atlantic/GTE savings. Id. at 137-138. VNJ testimony indicated that the August 21 Group identified seven primary areas of cost savings opportunities for the operating telephone companies: information systems, consumer and business, network/customer service, procurement, product management and advertising, provision of wholesale services, and research and development. Id. at 138. VNJ stated that the direct result of costs incurred to integrate the merged entity was the production of savings for the operating telephone companies in the areas identified above, and without the costs of the Bell Atlantic/GTE merger, there would have been no resulting savings. Id. at 138-139. According to VNJ, total estimated Bell Atlantic/GTE merger savings attributable to VNJ intrastate rate-regulated operations from 2000 through 2003 were \$6 million, \$20.4 million, \$37.6 million and \$46.0 million respectively. VNJ-19 at Exhibit D-1R. VNJ indicated that merger related costs were \$19.8 million, \$16.0 million, \$13.8 million and \$6.4 million. Id. at Exhibit D-2R. VNJ thus calculated net merger savings (savings minus costs) to have been (\$13.8) million, \$4.4 million, \$23.8 million and \$39.6 million respectively. Id. at Exhibit D-3R.

VNJ argued the recommendation by the Advocate that additional merger savings be returned to ratepayers is unfounded and savings achieved by VNJ attributable to intrastate regulated services "have already been captured in the company's financial results and are reported to the Board in surveillance reports." VNJB at 139. According to VNJ, its intrastate rate-regulated returns have fully included the relevant net merger savings and have not exceeded the level that would trigger sharing under PAR-1. Ibid. VNJ argued that "[r]equiring the Company to pass on additional benefits, above and beyond actual savings already reflected in surveillance reports filed in compliance with Board requirements, would be inconsistent with – and indeed violative of – the intent and letter of the current plan," and "would represent bad public policy." Id. at 139-140. VNJ reasoned that its customers have enjoyed extremely low rates and have neither an entitlement to savings generated by the Company, nor ownership rights to the business that would entitle them to a share of the profits. Id. at 140. VNJ also asserted that "the risks of entering into the NYNEX and GTE mergers, as well as associated business decisions executed as a result of those mergers, rest with VNJ's stockholders." Ibid.

VNJ argued that the Advocate and AT&T had inflated the amounts of savings associated with the NYNEX and GTE mergers. Id. at 141. Mr. Hall's testimony alleged "numerous errors of fact or logic" in Mr. Rothschild's calculations. Id. at 141-145. VNJ maintained that it had fully complied with the Board's Orders regarding the tracking and reporting of merger savings and costs associated with the NYNEX/Bell Atlantic and Bell Atlantic/GTE mergers. Id. at 145. VNJ suggested that capital savings realized by the mergers have allowed VNJ to increase its capital spending, and capital synergies achieved in New Jersey have allowed VNJ to redeploy capital investments to maintain its high service quality level and to fulfill all of its ONJ commitments, without increasing rates for rate-regulated services. Id. at 145-146.

3. Advocate Position

The Advocate argued that New Jersey ratepayers have "supported 100% of the costs" of VNJ's operations for decades and as such are "entitled to benefit from the merger savings." RPAb at 42, referencing RPA-36 at 12. According to the Advocate, the Board should

balance the interests of investors and ratepayers and require VNJ to pass on to New Jersey ratepayers (1) a one-time refund to reflect their proportionate share of the historical merger savings from the Bell Atlantic/NYNEX merger, and (2) a permanent rate reduction to reflect their proportionate share of the ongoing savings from both the Bell Atlantic/NYNEX merger and the Bell Atlantic/GTE merger.

[Id. at 42-43; RPA-36 at 13].

The Advocate argued that the Board should order VNJ to provide ratepayers with a one-time refund of \$43 million to reflect a sharing of VNJ's historical merger savings, and a permanent rate reduction of an estimated \$92 million per year, to reflect on-going savings. RPAb at 45, referring to RPA-36, JAR 11 at 1 (revised November 8, 2001). The Advocate explained that the \$43 million one-time refund is half of the estimated \$85 million net savings allocated to VNJ's intrastate regulated operations for 1997-2000. Ibid. The Advocate advised that the \$92 million permanent rate reduction represents "half of the estimated \$184 million expected merger savings on a going forward basis." Ibid. Mr. Rothschild's corrected testimony offered an explanation of the derivation of these figures in RPA-36 at 45-46, and JAR 11 (revised November 8, 2001) at Attachment 2. The Advocate explained that it derived these figures by "aggregating [VNJ's] estimated total historical expense savings for the NYNEX merger and

calculating ongoing expense savings for both mergers after 2000 and then incorporating the revenue enhancements and capital cost savings that [VNJ] enjoys as a result of these mergers.” RPAb at 46. The Advocate asserted that revenue and capital cost savings produce benefits that are just as real as operating benefits. Ibid. The Advocate argued that “VNJ clearly contemplated these benefits in evaluating the mergers,” as evidenced by Bell Atlantic Corporation’s Joint Proxy Statement for the 1999 Annual Meetings of Shareholders and Prospectus which stated the following:

[b]ased on anticipated revenue and expense synergies, we expect that the merger will improve earnings per share, excluding merger-related charges, in the first year following completion. We estimate that the merger will also generate significant capital synergies, producing higher capital efficiency and higher cash flow and margin growth.

[RPA-19 at 125].

The Advocate argued that, although VNJ has claimed that it has not separately quantified revenue enhancements from overall revenue growth, it does not dispute that such enhancements exist. RPAb at 47, referencing RPA-38, (VNJ response to interrogatory RPA-VZ 64). Having incorporated the savings and enhancements, according to the Advocate, Mr. Rothschild then prorated the total benefits of both mergers to capture the savings attributable to VNJ’s intrastate rate regulated services. RPAb at 48; RPA-36, JAR 11 at 1 (revised November 8, 2001). The Advocate then explained that these savings were then offset by regulated merger costs to provide total merger savings of \$85 million for the years 1997-2000 and an estimated \$184 million per year in ongoing savings. Ibid. Finally, according to the Advocate, these savings were divided in half to produce the one-time \$43 million refund, representing what the Advocate contended was the New Jersey ratepayers’ share of historical cost savings, and the \$92 million per year in a permanent rate reduction, representing what the Advocate contended was the New Jersey ratepayers’ share of ongoing merger savings. Ibid.

4. Discussion

Having carefully reviewed the analysis of merger savings provided by VNJ in compliance with our December 22, 2000 Order and having carefully considered the arguments of the parties, we FIND that under the circumstances of the original plan, an appropriate balance can be achieved between reasonable rates and proper incentives to innovate if a portion of the merger savings achieved by VNJ during PAR-1 be made available to customers in the form of increased commitments by VNJ to the Board-approved Lifeline and Access New Jersey Programs. The Board has identified the issue regarding the regulatory treatment of the merger savings, if any, that might be realized first by Bell Atlantic Corporation as a result of the Bell Atlantic/NYNEX merger, and later by Verizon Corporation as a result of the Bell Atlantic/GTE merger, and what amount, if any, should be allocated to the New Jersey operating company.⁹⁷ The Board is aware of the support of the Bell Operating Company in New Jersey by the State's ratepayers, which fact, the Advocate argues, justifies a sharing of Verizon merger savings with New Jersey ratepayers. We are also aware of the argument of VNJ that the risks of these mergers fell on Verizon's shareholders rather than OTC ratepayers, and that the Company's ratepayers have largely been insulated from risk by the fact that rates have been unchanged since 1985. And we are cognizant of the fact that VNJ's PAR-1, that set forth and governed the Board's regulatory treatment of VNJ, as well as VNJ's regulatory responsibilities to the Board and its ratepayers, during the relevant merger time periods, provided for a sharing mechanism, according to which earnings in excess of 13.7% would be shared with ratepayers.⁹⁸

Faced with these conflicting arguments, but also aware of the many benefits accruing to VNJ by virtue of PAR-1 and the proposed PAR-2, and mindful of the benefits that have accrued to, and would continue to accrue to the State's ratepayers by virtue of strengthened Lifeline and ANJ programs, the Board believes that a balanced approach, that would both allow a portion of merger savings to further fund these programs and also provide closure to the long-standing controversy surrounding both the calculation of the savings derived from each of the mergers and the proper method of allocating some portion of those merger savings to New Jersey is in the best interests of the Company and its ratepayers.

⁹⁷ See Order, I/M/O the Board's Review of the Amended and Restated Agreement and Plan of Merger Dated as of April 21, 1996 By and Between NYNEX Corporation and Bell Atlantic Corporation, Docket No. TM96070504 (May 22, 1997) (hereinafter, NYNEX Merger Order); and Order, I/M/O Joint Petition of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger, Docket No. TM98101125 (March 15, 2000).

⁹⁸ See the NYNEX Merger Order at 6 (recognizing the relationship of the PAR-1 sharing formula to the sharing of merger savings).

Accordingly, we DIRECT that VNJ shall be required, as part of PAR-2, to further fund the existing ANJ program as described herein, including the additional expenditures, for communications technology equipment in the amount of \$55 million over a five year period, with equal amounts to be allocated each year. The supported technology will serve the State's schools and libraries as identified by the State's Department of Education and the Board. Additional funds derived from VNJ's merger savings shall fund its commitment to the Lifeline program that we have expanded herein. The expenditure of these funds as provided for herein shall finally resolve all merger savings issues stemming from the NYNEX and GTE mergers, and provide an appropriate balance between reasonable rates and proper incentives to innovate.

IV. CONCLUSION: PAR-2

For the foregoing reasons, the Board FINDS that, as modified herein, the plan for an alternative form of regulation filed by VNJ:

- (1) will ensure the affordability of protected telephone services;
- (2) will produce just and reasonable rates for telecommunications services;
- (3) will not unduly or unreasonably prejudice or disadvantage a customer class or providers of competitive services;
- (4) will reduce regulatory delay and costs;
- (5) is in the public interest;
- (6) will enhance economic development in the State while maintaining affordable rates;
- (7) contains a comprehensive program of service quality standards with procedures for Board monitoring and review; and
- (8) specifically identifies benefits to be derived from the alternative form of regulation.

The Board CONCLUDES that VNJ's plan, as modified herein, satisfies the criteria set forth in N.J.S.A. 48:2-21.18 and otherwise complies with the Telecommunications Act of 1992.

Accordingly, the Board HEREBY APPROVES, with the modifications set forth herein, a new plan for an alternative form of regulation applicable to VNJ. The Board emphasizes that, except

as expressly set forth herein or in the Telecommunications Act of 1992, all other provisions of Title 48 and Board regulations, Orders and policies will remain applicable to VNJ, unless the law hereinafter provides otherwise or the Board hereinafter orders or directs otherwise. The Board HEREBY ORDERS VNJ to refile with the Board the plan originally filed on June 27, 2002, modified to be consistent with this Order, within 30 days of the date of this Order. VNJ shall contemporaneously file copies of the plan modified to be consistent with this Order on all other parties to this proceeding. This Order, and the plan filed in accordance herewith, shall supersede any inconsistent provision in the plan and accompanying letter filed on June 27, 2002, and any such inconsistent provision, including any language not expressly provided for herein, must be removed from the filed plan, which will be effective as of July 1, 2002. Following the filing of the plan modified to be consistent with this Order, the Board shall review the plan to ensure compliance with this Order, and if any provision fails to comply with this Order, the Board shall take such further action as shall be necessary.

V. RECLASSIFICATION OF MULTI-LINE BUSINESS SERVICES

A. Introduction

VNJ's petition to reclassify rate regulated multi-line business services as competitive services pursuant to N.J.S.A. 48:2-21.19, submitted simultaneously with its PAR-2 filing, was the subject of substantial testimony, discovery, cross-examination, and briefing by several parties to this proceeding.

VNJ's petition was supported by the panel testimony of its witnesses Dr. Taylor and Messrs. Shooshan and Weber (the Reclassification Panel). Testimony opposing VNJ's request was submitted on behalf of the Advocate (Dr. Selwyn), AT&T (Dr. Lehr and Messrs. Nurse and Kirchberger), the New Jersey Cable Telecommunications Association (NJCTA) (Ms. Wallman), and WorldCom (Mr. Sands). VNJ, the Advocate, AT&T, and the Board Staff propounded numerous discovery requests, and substantial additional information was provided in response to these requests and subsequently placed in the record. VNJ's Reclassification Panel was subjected to cross-examination by counsel for each of those adverse parties. Substantial portions of the parties' post-hearing briefs were devoted to the subject of reclassification.

For the reasons discussed below, the Board FINDS that, with regard to the Company's business customers with five or more lines, there is sufficient evidence of the ease of entry into this market, competitors to VNJ exist in this market, and these customers enjoy the availability of like or substitute services. Accordingly, the Board herein GRANTS VNJ's request to reclassify as competitive, the 45 services contained on Attachment C for business customers with five or more lines, or line equivalents⁹⁹. For customers with two, three or four lines, these services shall not be reclassified at this time. However, VNJ shall be authorized to adjust rates by 10% per year for all non-competitive services, except the basic line rate, provided to customers with two, three or four lines. The Board DIRECTS Staff, within twelve months, of the effective date of the new plan adopted herein, to oversee the conduct of a survey of multi-line business customers regarding the availability and extent of customer choice for business customers. With regard to telecommunications services provided to business customers with two, three or four lines, the Board defers its judgement as to whether or not to reclassify any or all such services as competitive until after completion of the customer survey.

B. VNJ Position

VNJ has sought reclassification of forty-five separate and distinct business services provided to multi-line business customers. As described by the Company, these services fall into four categories based on the type of equipment required to provide the service and the manner in which they are used by customers. These categories are:

- (i) switched local services which include ordinary voice dial-up lines as well as certain switched data lines (e.g., basic exchange lines, IntelliLinq BRI and PRI ISDN lines, Internet Protocol Routing Service);
- (ii) switch-related ancillary services, which are services that rely on the functionality in the switch and are only available once a switched local connection has been acquired, such as custom calling services (e.g., Call Waiting, Call Forwarding, Return Call, and Caller ID) and others that are normally provided only to business customers (e.g., Uniform Call Distributor, Message Service Interface);
- (iii) other ancillary services that do not directly involve the local loop or switch; and

⁹⁹ Line equivalents means a service arrangement where less than five lines provides the equivalent capability of five or more lines. Examples include ISDN PRI, Direct Inward Dialing, PBX.

- (iv) private line services that are dedicated narrowband point-to-point non-switched services.

[VNJb at 76-77].

Throughout the proceeding, VNJ argued that reclassification of multi-line business services is consistent with the technological, regulatory, and economic evolution of competitive telecommunications markets, as well as with the economic principles underlying the reclassification of service. Id. at 73-76. With regard to modern telecommunications technology, for example, VNJ pointed out that (1) “wherever interexchange carriers (IXCs) already have large switches or competitive local exchange carriers (CLECs) have fiber rings and switches, those carriers can readily expand or extend that capacity to accommodate local service,” and (2) there is substantial evidence that these facilities exist in New Jersey. Id. at 73-74.¹⁰⁰ With regard to economic and market trends, VNJ stated that the economic forces driving VNJ’s competitors to satisfy customer demands for integrated packages, have led to the offering of long distance and other telecommunications services along with local service offerings by both large IXCs and smaller CLECs. VNJb at 74-75.¹⁰¹

With regard to the evolution of competition in the telecommunications industry, VNJ argued that regulatory policies embodied in the Telecommunications Act of 1996 (1996 Act) and the New Jersey Act “have effectively opened local exchange markets to competition.” Id. at 75. VNJ argued that reclassification of its multi-line business services will enhance competition by providing VNJ with “competitive parity,” giving VNJ the necessary flexibility to respond to customer needs and to meet competitive market pressure under the same regulatory ground rules as its competitors. Id. at 76. VNJ also pointed out that in its January 2002 Consultative Report filed in VNJ’s FCC Section 271 proceeding,¹⁰² the Board advised the FCC that VNJ had taken the necessary steps under the federal Act to open its local exchange and exchange

¹⁰⁰ As examples of evidence of the existence of facilities capable of “accommodating” local exchange business services owned by competitors, VNJ referenced VNJ-32, an exhibit that contained responses from AT&T and WorldCom to 33 VNJ discovery requests, many of which contain proprietary information but can be described generally. These responses include detailed information regarding collocation arrangements, fiber sheath and route miles, local exchange switches, investment in facilities, local exchange customers and business access lines.

¹⁰¹ As examples of integrated service packages offered by its competitors, VNJ referred to products offered by AT&T, WorldCom, SBC and Broadview Networks. See VNJ-1 at 11-12, and at Attachment 11. Attachment 11 to the VNJ prefiled direct testimony of its panel of witnesses supporting its reclassification request includes information on the fiber miles, switches, NXX codes (local exchange telephone codes), and service offerings of 20 New Jersey facilities-based telecommunications providers as well as an overview of New Jersey digital subscriber line (DSL) providers. Attachment 11 was offered in support of testimony filed with the Board with VNJ’s PAR-2 and reclassification request petitions on February 15, 2001.

¹⁰² I/M/O the Consultative Report of the Application of Verizon New Jersey, Inc. for FCC Authorization to Provide In-Region InterLATA Service in New Jersey, Docket No. TO01090541, CC Docket No. 01-347, Consultative Report of the New Jersey Board of Public Utilities (January 14, 2002) (Consultative Report).

access markets in New Jersey to competition. VNJrb at 66-67. According to VNJ, in light of the substantial evidence regarding the state of local competition presented in that proceeding, the Board concluded that New Jersey local telephone markets have been “irreversibly open to competition.” Id. at 67, quoting from the Consultative Report at 1-2.

1. Standards for Reclassification

With regard to the appropriate standards for reclassification to be considered by the Board in this proceeding, VNJ argued that the three criteria set forth in N.J.S.A. 48:2-21.19, i.e., ease of market entry, presence of other competitors, and the availability of like or substitute services, are the appropriate and sufficient criteria for assessing reclassification proposals. VNJb at 78-95. VNJ contended that efforts to expand these criteria, e.g., to include traditional antitrust tests of market power and consideration of “market share,” would harm competition and economic efficiency. Id. at 78. VNJ asserted that the evidence it had provided, coupled with Board experience, demonstrate that there is no need to expand the statutory criteria because (1) the Board has already applied these criteria in successful classifications or reclassifications of services as competitive; (2) meeting these criteria is sufficient to show the existence of competition; and (3) the additional proposed criteria are “irrelevant and inappropriate.” Ibid. VNJ argued that the additional proposed criteria would be inconsistent with the requirements of the New Jersey Act and with prior practice of both the FCC and the Board. Id. at 78-79, 89-93.

With regard to the existing statutory criteria, VNJ alleged that the evidence of competitive presence it offered, including (1) the existence of facilities-based competition; (2) resale; (3) the purchase of unbundled network elements; (4) the deployment by CLECs of network facilities and collocation arrangements; and (5) the existence of customer relationships, is the type of evidence that has been both recognized and relied on by regulators and economists to evaluate the extent of competition. Id. at 79. VNJ argued that the deployment of actual network facilities by competitors is “significant evidence” of the presence of competitors in the market, their willingness to take the risks of entry by investing their own capital, and the ease with which market entry is possible. Id. at 79-80. The Company asserted that CLEC investment of hundreds of millions of dollars in 56 switches capable of providing local exchange voice services indicates the use of those switches to provide local services in competition with VNJ. Id. at 80, referring to VNJ-1 at 21. VNJ also contended that the purchase of UNEs and resold lines are “direct evidence of competition, and that the purchase of a UNE “undoubtedly” means that the

purchasing CLEC is serving a customer. Ibid. VNJ also claimed that “the widespread existence of resold lines” indicates the presence of competitors without their having to incur substantial capital costs. Ibid. The Company asserted that every customer of a reseller is no longer a VNJ customer, and efforts by NJCTA and WorldCom witnesses to downplay the significance of resale are “contrary to the intent of Congress and the letter of the 1996 Act, as well as the view of the FCC and state regulatory officials.” Id. at 81.¹⁰³

VNJ also contended that collocation is another “clear” indication of the presence of competitors. VNJb at 8 referring to 1TR140-41 and NJCTA-1 at 33. VNJ pointed to language in a decision by the FCC, quoted by the U.S. Court of Appeals for the District of Columbia Circuit, to support its contention that “investment in collocation by multiple competitors was powerful evidence of ‘irreversible entry’ and competitive presence. Id. at 82-83, citing to I/M/O Access Charge Reform, 14 F.C.C.R. 14221, 1999 WL 669188, Fifth Report and Order and Further Notice of Proposed Rulemaking, ¶ 80 (1999), and WorldCom, Inc. v. FCC, 238 F. 3d. 449, 458-59 (D.C. Cir. 2001).

VNJ also argued that carriers with existing customer relationships in a market segment must be considered present in the local exchange market because they are well-positioned to expand their presence and diversify into the local exchange market. Id. at 83; 1TR135-36. VNJ also referenced United State Department of Justice (DOJ) merger guidelines that, according to the Company, consider as a market participant a firm that has existing assets that “likely would be shifted or extended into production or sale of the relevant product within one year, without incurring significant sunk costs of entry.” Id. at 84, quoting from the DOJ and Federal Trade Commission Horizontal Merger Guidelines, April 2, 1992 (hereinafter, DOJ Merger Guidelines), §§ 1.321, 1.322.

With regard to the ease of entry, VNJ argued that economists and antitrust enforcement authorities consider the degree to which substantial sunk costs are required to enter the market. Id. at 84-85; VNJ-1 at 26. VNJ contended that in the telecommunications industry, it is also necessary to consider the impact of regulation on entry. Id. at 85. According to VNJ, the

¹⁰³ In support of these assertions, VNJ referenced I/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. CC Docket No. 96-98, First Report and Order (August 1, 1996) (hereinafter, Local Competition First Report and Order) at ¶¶12,907, I/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (November 5, 1999) at ¶5; and AT&T Communications of Illinois, Inc. Petition for a Total Local Exchange Wholesale Tariff From Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company Pursuant to §13-505.5 of the Illinois Public Utilities Act, et al., Order, Docket Nos. 95-0458 and 95-0531, 1996 WL 671292 (Ill. CC. June 26, 1996) at 5-6.

provisions of the 1996 Act, especially those requiring VNJ to provide cost-based UNEs and its retail services at wholesale discount, as well as enforcement of the 1996 Act by the FCC and the Board, “minimize if not eliminate any barriers to entry.” Id. at 85-87.

With regard to substitute services, VNJ argued that for purposes of reclassification, services need not be identical in all respects to the services being considered for reclassification. Id. at 87. According to the Company, it is only required that the like or substitute services fulfill the same function for the customer as the incumbent’s service.” Ibid. Moreover, VNJ asserted that a variety of evidence, including “competitors’ tariffs and promotional materials, data on ported numbers and service orders showing lines and services shifting from VNJ to other carriers, data on competitors’ facilities and switches capable of offering the same services and features offered by VNJ, and customer surveys and interview results,” may be used to evaluate whether like or substitute services are available. Id. at 87-88. VNJ argued that the availability of like or substitute telecommunications services means that the ILEC “cannot profitably raise rates above competitive levels.” Id. at 88, citing VNJ-3 at 11.

With regard to assertions by its opponents that reclassification criteria should include an assessment of market share, VNJ argued that these assertions were inconsistent with economic principles, prior decisions of the FCC and the Board, and with prior positions espoused by AT&T. VNJb at 89-93. The Company noted that AT&T’s witness, Dr. William A. Lehr, acknowledged the significance of the three existing statutory criteria when he stated that these criteria “form the core of an analysis to determine if a firm has market power.” Id. at 90, referring to AT&T-78 at 21-22. VNJ noted that the FCC had characterized AT&T’s position that market share, alone, without consideration of total available capacity, distorted the analysis of a firm’s market power. Id. at 90.¹⁰⁴

VNJ also argued market share tests are particularly inappropriate in the New Jersey marketplace because regulation has kept local service prices below competitive levels, thus

¹⁰⁴ VNJ referenced VNJ-3 at 13-15, including a quote from Motion of AT&T to be Reclassified as a Non-Dominant Carrier, FCC 95-427 (October 23, 1995) in which the FCC states the following:

AT&T contends that market share alone is not a valid measure of market power in any aspect of the interexchange market because: (a) competitors’ excess capacity constrains AT&T’s ability to restrict output; ... Thus, AT&T argues that market share figures based solely upon output – rather than on total available capacity – distort the importance of market share as an indicator of market power.

[VNJ-3, quoting from Motion of AT&T to be Reclassified as a Non-Dominant Carrier, FCC 95-427 (October 23, 1995) at ¶ 42].

ensuring the incumbent's high market share. *Id.* at 90. The Company also noted that market share tests to determine whether to reclassify service would perversely encourage competitors to "delay and/or distort their entry and expansion into local services markets in order to maintain restrictions on Verizon NJ." *Id.* at 91. According to VNJ, both the FCC and the Board have previously rejected the use of market share indicators in evaluating the extent of competition for reclassification purposes.¹⁰⁵

In response to the Advocate's assertion that a market share analysis is required under the DOJ Merger Guidelines, VNJ argued that the DOJ Merger Guidelines in this respect are applicable to assess the effects of a merger, rather than evaluating the reclassification of a historically regulated service. VNJrb at 83. In addition, VNJ pointed out that the Guidelines support a broad, "forward looking" approach to evaluating market participation by competitors that is inconsistent with the "static" market share analyses that its opposing parties have pursued in this case. *Ibid.* See also VNJb at 92, in which the Company argued that static, backward looking market share measures are actually "contrary to the New Jersey Act" as well. In response to claims by the Advocate and AT&T that a market share approach would be consistent with that taken by the FCC in 1995 when it declared AT&T to be a nondominant carrier (RPAb at 127; AT&Tb at 16-17), VNJ argued, among other things, that those parties ignored the FCC's express warning in that case about the dangers of relying on market share, and gave considerable weight to the presence of competitors in the market. VNJb at 83-84.

2. Presence of Competitors

Having presented argument as to the sufficiency of the statutory criteria in assessing whether regulated services should or should not be reclassified as competitive services, VNJ sought to demonstrate that the information submitted in support of its reclassification petition satisfied each of the criteria. In addition to this material, VNJ also argued that the Consultative Report issued in the Board's New Jersey 271 Proceeding supports the granting of its reclassification

¹⁰⁵ *Id.* at 91-92. VNJ referenced the FCC's refusal to adopt a market share requirement when LECs request pricing flexibility in the provision of access services. Fifth Report and Order and Further Notice of Proposed Rulemaking, I/M/O Access Charge Reform, et al., cc Docket Nos. 96-262, 94-1, 98-63 and 98-157, FCC 99-206 (August 27, 1999) at ¶¶ 90-91. The Company also referenced the Board's reclassification of VNJ's intraLATA toll services despite the fact that it had 90% share of the State's total toll minutes, and its share of presubscribed residence intraLATA toll lines was 100%. See Decision and Order, I/M/O Investigation of IntraLATA Toll Competition For Telecommunications Services on a Presubscription Basis, Docket No. TX94090388 (May 28, 1997). VNJ also pointed to VNJ-3 at 10, listing other Board reclassification orders in which, according to the Company, the Board relied on the same kind of evidence as presented in this case in support of findings that the statutory criteria had been satisfied.

petition. VNJrb at 66-68, citing to the Consultative Report of the New Jersey Board of Public Utilities, I/M/O the Consultative Report of the Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region InterLATA Service in New Jersey, Docket No. TO01090541, (FCC) cc Docket No. 01-347 (January 14, 2002). The Company noted that the Board had advised the FCC that it had taken the necessary steps under 47 U.S.C. § 271 to open its local exchange and exchange access markets in New Jersey to competition. Id. at 66. VNJ noted that the Board's Consultative Report to the FCC included references to several actions taken to remove barriers to local exchange market entry, specifically, successful evaluation of the Company's operations support systems, adoption of the New Jersey Carrier-to-Carrier Guidelines, adoption of a new Incentive Plan, approval of a collocation stipulation, and a recent decision establishing UNE rates. Id. at 67. VNJ noted that the Board relied on these actions, as well as on the approval of many interconnection agreements and grants of local authority, to conclude that "the New Jersey local telephone markets are irreversibly open to competition." Ibid., quoting from the Consultative Report at 1-2. With regard to the presence of competitors, VNJ asserted that its reclassification panel of witnesses had demonstrated (1) that competition for multi-line business services is present from "numerous and substantial" competitors; (2) that CLECs compete using all the methods envisioned by Congress in the 1996 Act; and (3) competitors are present throughout VNJ's service territory. VNJb at 96. VNJ contended that it was undisputed that there were 68 CLECs present in New Jersey, of which, 31 were selling facilities-based local services, including 23 providing switched voice services. Id. at 97; VNJ-1 and VNJ-3 at Attachment R1. In addition to the 31 facilities-based carriers, VNJ asserted that nine more CLECs had facilities under construction or planned. Ibid. VNJ stated that 14 carriers provided competitive DSL services, and 13 providers of switched voice services are collocated in its central offices. Ibid. VNJ also indicated that 46 carriers provide resold business lines in the State. Id. at 98. According to VNJ, many of these CLECs had been operating in New Jersey for an extended period of time, i.e., in excess of three years. Ibid. VNJ argued that many of these competitors were substantial companies with "well-established presences in New Jersey." Ibid. VNJ contended that, according to data provided by it in the recent New Jersey 271 proceeding (BPU Docket No. TO01090541) the number of lines served by competitors has continued to increase, while the number of retail lines served by the Company has declined. Ibid. According to VNJ, this state of competition exists despite the financial difficulties faced by certain CLECs, many of whom were small start-up companies, and "data CLECs" adversely affected by the burst of the dot-com bubble. Id. at 98-99. VNJ also noted that despite the recent economic downturn, total CLEC lines grew by approximately 42 percent from year-end

2000 to October 31, 2001, and that in the four months from June 30 to October 31, 2001, the overall number of lines served by CLECs grew at an even faster annual growth rate (about 58 percent) than in the first half of the year open to competition.” VNJrb at 68. Ibid., quoting from the Consultative Report at 1-2.

As further evidence of competitive presence, VNJ pointed to the “substantial” sunk investment competitors have made in local competition. In support of this assertion, the Company noted that “substantial” investment by AT&T and numerous other carriers in fiber route miles and local switches, and of several competitors’ abilities to deploy fixed wireless facilities. VNJb at 99, 105-107. VNJ also asserted that competitors are serving substantial and increasing numbers of business customers throughout the VNJ service area. VNJb at 100-105.

The Company asserted that its E911 data indicated that CLECs were serving over 267,000 voice lines with their own facilities by May 2001, and that CLECs serving business customers with their own facilities were present in 90% of VNJ’s exchanges. VNJb at 101, referencing VNJ-1 at 50-51. In addition, VNJ noted that competitors were serving, as of March 2001, over 115,000 lines by reselling its business services, including BRI ISDN lines, POTS lines, payphone lines, analog PRX Trunks, PRI ISDN lines, and voice grade Wide Area Telephone Service (WATS) lines. Ibid., referencing VNJ-1 at 44-45. The Company indicated that resale is occurring in every one of its 204 wire centers, and that there are “multiple resellers in virtually every wire center. Id. at 101-102, referencing VNJ-1 at 48-49 and VNJ-3 at 31. VNJ asserted that considering E911 listings, resold lines and the sale of UNE-Ps, at least 393,582 business access lines were served by its competitors as of May 2001. Id. at 102, referencing VNJ-3 at 38.

VNJ also presented data on two measures that, according to the Company, “directly reflect competitive losses ... and provide further evidence of the geographical scope of competitive presence and of the size of businesses choosing competitive alternatives.”¹⁰⁶ In addition, according to the Company, there is “undisputed evidence that competitors have collocation arrangements in the 158 wire centers that account for 95% of VNJ’s business lines and business revenues. Id. at 103-104. VNJ asserted that ten carriers selling facilities-based switched services are among those carriers with collocation arrangements, and that collocation

¹⁰⁶ Id. at 102-103, referencing VNJ-1 at 52-54, VNJ-3 at 31-32, Attachment R2.

can be accomplished quickly, as evidenced by the fact that as of the filing of the initial briefs in this matter, there were about 1470 completed collocation arrangements in its service area, representing a 91% growth in the most recent year.¹⁰⁷ VNJ also asserted that competitors' use of NXX assignments and local number portability demonstrate the widespread presence of competition throughout its service territory.¹⁰⁸ According to the Company, all of this evidence supports VNJ's position that competitors are present for customers in all line size categories, including single-line customers. Id. at 100-105.

VNJ also argued that the widespread presence in New Jersey of CLEC facilities and their capacity to serve business customers in the State is further evidence of significant competition for local business services. Id. at 105-107. As examples, the Company pointed to substantial CLEC switching capacity, the existence of "thousands of route miles of CLEC-owned fiber optic facilities," the presence of competitors with fixed wire licenses that cover nearly all of VNJ's service area, and the fact that VNJ's competitors provide wholesale offerings to each other, including dark fiber for transport or for use in local loops. Ibid.¹⁰⁹

VNJ also relied on supporting evidence from customer research performed by the Company in support of its positions on the presence of competitors, advising that the telephone survey and face-to-face discussion group information was "intended to complement other data presented." Id. at 107-109. In interpreting the results of these efforts, VNJ asserted that the survey results demonstrated widespread customer awareness of the existence of alternative providers of business services throughout the State, and provided evidence of substantial marketing activities by competitive local service providers. Ibid.

With regard to AT&T's criticism that the survey failed to ask whether customers are actually purchasing local service from competitors, VNJ pointed out that the survey was not intended to quantify the presence of competitors and existence of substitute services, but, rather, was intended to determine whether substitutes are available from competitors that are present in the market today. VNJrb at 74. Similarly, in response to parties that focused on those customers surveyed who did not report being marketed to by competitors, VNJ argued that whether or not

¹⁰⁷ Id. at 104, referencing VNJ-1 at 51, 59 and Attachment 9, and VNJ-32 and VNJ-33 (AT&T's Response to interrogatory VNJ-5 and WorldCom responses to interrogatories VNJ-26, VNJ-28 and VNJ-46).

¹⁰⁸ Id. at 104, referencing VNJ-1 at 57 and VNJ-3 at 31.

¹⁰⁹ In support, VNJ cited extensively to VNJ-1, VNJ-3, VNJ-32 and VNJ-33, as well as to a press release from IDT Corp. and to WorldCom's wholesale tariff.

such customers had been marketed to yet, the fact that a large fraction of customers had been marketed to demonstrates that competitors are present and actively competing with VNJ throughout the state. VNJb at 109-110; VNJrb at 82. VNJ also alleged that in certain instances, the survey's critics fault the survey for characteristics that in fact actually understate the extent of competition for local services (including WorldCom's criticism that the survey included single-line businesses for whose services reclassification is not being proposed). VNJb at 112.

3. Availability of Like or Substitute Services

VNJ pointed out that although the statutory criteria "presence of competitors" and "availability of like or substitute services" are conceptually distinct, the types of evidence presented with respect to the first criterion may also demonstrate satisfaction of the second criterion. Id. at 112. In addition, VNJ pointed to marketplace evidence that it claimed demonstrates that alternatives are clearly available. Id. at 113. VNJ asserted it had provided (a) evidence establishing that competitors do or can reliably provide every form of business service that VNJ seeks to have reclassified, (b) evidence that customers have, in fact, switched to competitors' services and continue to do so in increasing numbers, and (c) customer research confirming the widespread availability of like or substitute business services. Ibid. VNJ also noted that the Advocate's witness, Dr. Lee Selwyn had acknowledged that for purposes of this proceeding it is appropriate to consider competition for groups of services (rather than each service individually). Ibid., referring to VNJ-3 at 46 and RPA-20A at 131-32. Specifically, VNJ contended that it would be reasonable to treat many business switched services that are listed separately in VNJ's reclassification proposal as components of the local exchange service that may be supplied by the provider of the loop at nearly zero incremental cost. Ibid. Thus, the forty-five business services for which VNJ has sought reclassification have been presented in three distinct categories: (1) switched services (voice and data); (2) switched and other ancillary services; and (3) private line services. Id. at 114-118.

As for switched voice services, VNJ provided an analysis of lines lost to competitors, which it claims demonstrated that competitors have captured each type of switched voice access, namely, basic exchange access (including CPPTS and Foreign Exchange) and the local usage, and PBX trunks and DID terminations. Id. at 114. VNJ also pointed out that this analysis understated the competitive losses experienced, since the available data includes only a subset of customers and does not capture lines or services that were not provided before the customer

left VNJ. Id. at 114-15. VNJ pointed out that switched data services sought to be reclassified, namely, Switched 56, ISDN BRI, ISDN PRI, and IPRS, are available via resale, as well as from DSL providers and competitors such as AT&T, Connective, Covad, and Level 3 Communications.¹¹⁰

As for switched ancillary services,¹¹¹ VNJ reasoned that since the competitors providing local switched services use digital switches, as VNJ does, they can also provide all of the switched ancillary services included in VNJ's proposal.¹¹² According to VNJ, its competitors in fact have more than 50 digital switches with an estimated capacity of about 3 million lines providing local service in New Jersey. The Company asserted that its own records demonstrate that customers that have switched to competitive switched services have also purchased from competitors ancillary services that account for a substantial percentage of VNJ's ancillary vertical services revenues. VNJb at 115; VNJ-1 at 78-79.

With regard to private line services, VNJ reasoned that competitors that can provide dial tone lines and interoffice transport can also provide private line services on the same facilities. Id. at 116. According to VNJ, as an example, large IXCs have tariffs for services comparable to the analog voice-grade private line services VNJ seeks to have reclassified, and others can easily carry such services. Id. at 116, VNJ-1 at 79.

In addition, VNJ based its claim on the availability of like or substitute services on evidence of existing packages of services provided by competitors that "offer many alternatives to the business service options offered by the Company. Id. at 116. Packages of services offered in competition to the services VNJ seeks to reclassify include offerings by competitors such as AT&T, WorldCom, Adelphia Business Solutions, SNP Link, and XO Communications.¹¹³ VNJ also pointed to the existence of tariffs filed by its competitors for 33 of the 45 services that it seeks to have reclassified.¹¹⁴ The remaining 12 services, according to VNJ, are non-tariffed services that are either now offered, or can be offered by resellers, are discounted or packaged

¹¹⁰ Id. at 115, referencing VNJ-1 at 77 and Attachment 11, and the websites of AT&T, Connectiv and Covad.

¹¹¹ These ancillary services are Touch-Tone, Enhanced Caller ID, Caller ID Deluxe, Call Forwarding Variable, Call Forwarding Don't Answer, Call Forwarding Busy Line/Don't Answer, Remote Call Forwarding, Call Waiting, PBX trunk vertical features, DID Trunk Termination, Additional Listings, and Call Trace.

¹¹² VNJb at 115; VNJrb at 72, referencing VNJ-1 at 79, VNJ-3 at 5, 30.

¹¹³ Ibid., referring to VNJ-1 at 81-83 (identifying specific service packages by these companies).

¹¹⁴ Id. at 117, citing to VNJ-1 at 83 and Attachment 8; and VNJ-3 at 46-47.

versions of other services, or as indicated by non-tariff materials, are made available by competitive carriers by resale or UNEs. Ibid.

In response to the claims made by several parties that the Company's customer losses are occurring only for services already classified as competitive, VNJ claimed that its line loss data shows that more than 86 percent of the total line losses tracked are POTS lines or PBX trunks that have not yet been reclassified, and that those customers were formerly purchasing the relevant services from VNJ. VNJb at 117; VNJrb at 72. VNJ also noted that competitors were reselling VNJ business services that are substitutes for the services that VNJ seeks to have reclassified, including BRI ISDN lines, Plain Old Telephone Service lines, payphone lines, business analog trunks analog PBX trunks, PRI ISDN lines, and voice grade Wide Area Telephone Service (WATS) lines.¹¹⁵

In response to claims that VNJ has not demonstrated the availability of like or substitute services throughout the state, VNJ claimed that one or more of the "numerous indicators of competition" (e.g., collocation, general business line losses, ported numbers, 911 listings, CLEC voice switches, CLEC fiber presence, and fixed wireless license coverage) are present in every wire center in the state. VNJb at 117. In addition, VNJ argued that the widespread availability of UNEs and resale, the widespread existence of, as well the ease of obtaining, collocation arrangements, and the substantial availability of competitors' own facilities, mean that competitors have the capacity to compete in every wire center in the State. Id. at 117-18.

According to the Company, the "widespread" availability of like or substitute services is also evidenced by the rapid growth in demand for such services. Id. at 118. VNJ contended that as of June 2001, and based on the best information available from its own records, "44% of the lines that competitors had in service in June 2001 had been added in the last year." Ibid., referencing VNJ-3 at 32. VNJ claimed that the evidence it had submitted in its New Jersey 271 proceedings confirmed that CLEC growth and VNJ business line decline has continued despite the economic slow down. Id. at 118. VNJ again relied on customer research in the form of its telephonic survey and customer discussion groups to confirm this criterion. Id. at 119. Specifically, VNJ noted that a "significant portion of survey respondents" indicated that they had a choice of more than one company to provide local exchange service, had been marketed local

¹¹⁵ VNJrb at 72, referring to VNJ-1 at 44-45, VNJ-3 at 31 and Attachment R1.

exchange service, and were able to identify a number of companies that had marketed local service to them. Ibid., citing to VNJ-1 at 84. In response to criticisms of its survey techniques in the prior plan proceeding, VNJ noted that the survey instrument and form of introduction to the discussion group were purposefully designed to ensure that the participants understood they were to be discussing available alternatives to VNJ's regulated business local telephone services, rather than alternatives to services that are already competitive, such as high-capacity data services or any interexchange services. Id. at 119.

4. Ease of Market Entry

With regard to the ease of market entry criteria for service reclassification, VNJ contended that there is substantial evidence of ease of entry for local business services, and argued that its opponents have "mischaracterized the extent of current entry." Id. at 120-127. In summary of its position with respect to the ease of market entry the Company asserted as fact the following:

(1) substantial entry has occurred; (2) competitors can readily expand to serve adjacent geographic and related service markets; (3) the regulatory process itself, in implementing the New Jersey Act as well as the 1996 Act, stimulates, rather than impedes, competition; (4) business customers have observed an increase in their choices over the last two years; and (5) competitors are able to leverage their existing relationships to provide local telephone services as a component of their array of services.

[VNJb at 120; VNJ-1 at 90-91].

VNJ argued that no substantial economic or technological barriers to entry exist in New Jersey. Id. at 120-122. VNJ in particular asserted that the provision of UNEs by VNJ, as required by the 1996 Act, ensures that competitors can enter the market and provide local services at prices reflecting VNJ's own economies of scale and scope and with minimal incremental sunk investment costs. Id. at 120. According to the Company, the Board's and the FCC's policies concerning the availability of UNE-Ps further ensures the "spread of price-constraining competition for local residence and small business service." Id. at 121. VNJ also contended that competitors have the ability to rapidly enter any part of the business service market, using their existing capacity, extensive collocation and unbundled VNJ loops, in conjunction with competitors' switches and interoffice transport, and the ability to rapidly add new lines and

switches. Ibid. The Company also argued that the availability of switching capacity, the ability of competitors to connect their switches to collocation sites, the existence of competitors' fiber optic facilities and other types of transport, and the availability of collocation, UNE loops and transport help to:

ensure that neither the need to install switching capacity or interoffice transport, nor the local loop, present any barriers to entry or expansion.

[Id. at 121-22, referencing VNJ-1 at 94-99].

VNJ also noted the Board's efforts to promote local competition, including its approval of numerous interconnection agreements between VNJ and its competitors. Id. at 122, referring to VNJ-1 at 100, and Attachments 3, 12. VNJ noted that Board approval is not required for firms to enter the market and compete via resale. Ibid. In summary, according to the Company, there are no substantial regulatory barriers to entry. Ibid.

VNJ also noted that its customer research showed that the overall number of local service providers available to business customers has increased, and that increasing numbers of smaller competitors had made progress in achieving recognition by New Jersey business customers. Id. at 123. This was evidence, in VNJ's view, "of a market not characterized by prohibitive barriers to entry." Ibid.

VNJ insisted that opposing parties had mischaracterized the state of competitive entry in New Jersey, and incorrectly stated that significant barriers to entry remained. Id. at 123-25. The Company pointed to the testimony of its Reclassification Panel witnesses, which, in its view, detailed the substantial nature of competitive entry in New Jersey. Specifically, VNJ contended that by the time it filed its rebuttal testimony in May 2001,

?? Competitors were serving well over 390,000 business lines, or 62,000 more than were reported in the Reclassification Panel's direct testimony, which used data through January 2001;

?? Eight firms were serving more than 10,000 business access lines each;

?? 97 percent of the wire centers in VNJ's territory had four or more competitors present;

?? Competitors had captured customers with three or fewer lines in every single wire center; and

?? Facilities-based competition was present in wire centers accounting for about 90 percent of VNJ's business lines, as evidenced by ported numbers, and there are over 267,000 CLEC business E911 listings in VNJ's service area.

[VNJb at 123-24].

In response to the Advocate's allegations that because some carriers deploying network facilities have suffered subsequent financial difficulties, their facilities deployment is insignificant, VNJ argued that facilities construction, regardless of financial difficulties, is nonetheless a major step that demonstrates market entry. Id. at 124-25. In addition, VNJ asserted that financially viable competitors, such as Comcast Business Solutions and AT&T, continue to enter and expand their presence in VNJ's service area, using their own facilities as well as facilities acquired from other, less robust providers.¹¹⁶ In response to arguments by the Advocate, AT&T, and NJCTA that access to VNJ's OSS is a barrier to entry, VNJ characterized these arguments as "conclusory" and "hypothetical," arguing that none of these parties provided any evidence that any carrier had actually been disadvantaged by limitations in access to VNJ's OSS. VNJb at 125, referencing VNJ-3 at 55. VNJ also responded to AT&T's assertions that building transmission facilities over a nine month period was a "barrier to entry." Id. at 125-26, referencing AT&T-83 at 19-30. VNJ stated that nine months is a "short time period" in the context of the DOJ's Merger Guidelines that consider a firm as actually being in the market if it has the ability to provide service within a one (1) year period. Id. at 126; 1T134. VNJ also contested AT&T's assertion that creating collocation arrangements was a barrier to entry. According to the Company, collocation arrangements are present in wire centers representing 95 percent of VNJ's business lines and revenues, ... are increasing in number and can be used to provide virtually any service.¹¹⁷ Accordingly, VNJ concluded that the use of collocation arrangements could not be considered a barrier to entry. Ibid.

Finally, with regard to arguments that the Company's two-line threshold for what it considers a multi-line customer should not be used, VNJ noted that competition already exists for all sizes of business customers. VNJb at 94-95. VNJ argued that thousands of business customers with

¹¹⁶ VNJrb at 69-70, referencing Internet presentations and/or press releases by Comcast Business Solutions on October 30, 2001, and by AT&T on January 7, 2002.

¹¹⁷ Ibid., referencing VNJ-3 at 58, VNJ-32 (AT&T's response to discovery request VNJ-5), VNJ-33 (WorldCom's responses to discovery requests VNJ-26. -28 and -46).

from one to five lines had been captured by its competitors, and noted that 59 percent of lost business customers that can be tracked by VNJ's systems were one to three line customers. Id. at 94. The Company contended that competitors in 202 of VNJ's 204 wire centers had won single-line business customers.¹¹⁸ VNJ also claimed that its business customer survey established that even the smallest of its business customers were being "actively pursued by competitors in all geographic areas of New Jersey." Ibid., referencing VNJ-3 at 25-26.

C. Advocate Position

The Advocate asserted that VNJ failed to provide the evidence required to independently demonstrate, as it is required to under the statute, ease of market entry, the presence of competitors, and the availability of like or substitute services in the relevant geographic area. RPAb at 100. The Advocate argued that the Company had attempted to focus the Board's analysis of the three statutory criteria on a single criterion, "presence of competitors," and sought to carry its burden of proof on that criterion by demonstrating the "mere possibility of entry by competitors." Ibid. The Advocate asserted that the three statutory criteria, and the additional criteria it suggests the Board consider adopting, are independent requirements that are "designed to lead the Board to a conclusion about the overall state of competition in given services. Id. at 100-101. The Advocate, citing VNJ's "staggering rate of return" for currently competitive services, asserted that such a rate of return is characteristic of a market with little competition. Id. at 102. The Advocate charged that VNJ has been the "principle beneficiary" of reclassification, and that the Board should therefore proceed with great caution before it reclassifies multi-line business services. Id. at 103. The Advocate also suggested that the Board take this opportunity to establish a formal process for the determination of service reclassification standards beyond those deemed by the Legislature to be the minimum criteria for reclassification. Ibid. The Advocate urged the Board in fulfilling its statutory mandate to establish reclassification standards, to "focus on examining competition (rather than competitors)." Id. at 103-104.

1. Alleged Deficiencies in VNJ's Proposal

¹¹⁸ Ibid., referencing VNJ-3 at 22-23 and VNJ-33 (WorldCom's response to discovery request SR-1).

Separate and apart from its discussion of the evidence actually presented by VNJ, the Advocate argued that the Board should not consider VNJ's reclassification proposal, because of information that was not presented by VNJ. Id. at 104. The Advocate urged the Board to refuse to consider the Company's reclassification request "unless and until Verizon-NJ presents cost and revenue information on the services that it seeks to reclassify as competitive. Ibid. The Advocate argued that such information was "necessary for a proper determination of the general state of competition in the relevant services," and was an effective way to investigate VNJ's market power. Id. at 104-106.¹¹⁹

In addition, the Advocate criticized VNJ's request for the reclassification of all multi-line business services, i.e., all services provided to business customers with more than one line, on the ground that following such reclassification VNJ will be able to convert single line business customers into (unregulated) multi-line business customers by offering them a second line at no charge, and thereby evade Board oversight. Id. at 106-107. Finally, the Advocate asserted that VNJ should be required to provide "additional" evidence as to the practical [as opposed to the theoretical] availability of competitive alternatives to [VNJ's] multi-line business services." Id. at 107. In support of this concern, the Advocate relied on media reports, and on its own witness's description of his efforts to acquire T-1 service from a competitive provider in another jurisdiction. Id. at 107-108.

2. Criticisms Of Data

With regard to the data actually presented by VNJ, the Advocate also had numerous criticisms. Generally, the Advocate alleged that VNJ's "selective" data on lines lost, competitor collocation arrangements, E911 lines, and customer surveys are flawed and should not be considered as "evidence" in favor of reclassification. Id. at 109. First, the Advocate asserted that VNJ's data on "lines lost" from its General Business Line of Business "amount to only 4% of business lines in New Jersey," and that the line loss data do not necessarily equate to customer loss. Id. at 110. This concern appears to be based on the fact that VNJ tracks and reports data on General

¹¹⁹ Having reviewed VNJ's February 15, 2001 dual petitions for approval of a New Plan and for reclassification of multi-line business services on, February 26, 2001, the Advocate filed a lengthy motion requesting clarification of the Board's December 22 Order which framed VNJ's filing requirements for this proceeding, and supplementation of the filing by VNJ to correct its alleged deficiencies. Among the ten issues presented in the Advocate's motion, was a request that the Board order VNJ to prepare a cost of service study for its POTS offering. The Advocate did not request that we direct VNJ to prepare cost of service studies with reference to its reclassification proposal. That part of the motion requesting a POTS cost of service study was denied by the Board by Order dated June 20, 2001 because, in its New Plan petition, VNJ had not requested a change in RBES rates. See Order of Approval, Docket No. TO01020095 (June 20, 2001) at 3-4. The Board's Order deciding the Advocate's motion was not appealed.

Business customers using Billing Telephone Numbers (BTNs), and that since BTNs count each billing address as an individual customer, the data may overstate the true number of customers lost. Id. at 110-111. The Advocate referenced state proceedings in Illinois and Washington in which it alleged that state regulators criticized the use of line loss information. Id. at 111.

Second, the Advocate asserted that VNJ's evidence regarding the number of collocation arrangements provided to competitors in New Jersey is an improper means by which to demonstrate competition, in light of the relatively small market share currently enjoyed by competitors and the incomplete and/or inaccurate nature of existing data on collocation. Id. at 112-13. Third, the Advocate criticized VNJ's use of its own E911 data, rather than E911 data showing fewer E911 listings that was developed by competitors providing those lines.¹²⁰ The Advocate argued that VNJ was unable to explain the differences in the E911 data offered by the Company contrasted to what was reported by AT&T and WorldCom. Ibid. Finally, the Advocate took issue with the absence of certain questions in VNJ's customer survey. The Advocate charged that the failure to ask in its customer survey, whether those surveyed actually obtained service from competitors, and why respondents, given the competition alleged, chose to remain customers of Verizon-NJ, means that VNJ implicitly recognized that the responses to those questions would likely be unfavorable to it. Id. at 114. The Advocate recommended that the Board require "concrete data demonstrating the existence of actual competition in the relevant service for each market affected. Ibid. The Advocate recommended that the Board implement its own customer surveys to monitor state of competition in New Jersey. Id. at 115, citing the PAR-1 Order at 133.

3. Absence of Market Power

The Advocate asserted that VNJ has failed to demonstrate the "absence of market power" with respect to all customers. RPA at 115-118. The Advocate argued that while VNJ relied on the Department of Justice/Federal Trade Commission Merger Guidelines in defining market participants, it inappropriately ignored the fact that those Guidelines, according to the Advocate, specifically require a market share analysis "based on the total sales or capacity currently devoted to the relevant market together with that which likely would be devoted to the relevant market in response to a 'small but significant and nontransitory price increase.'" Id. at 116,

¹²⁰ Id. at 113, referencing AT&T-13, AT&T-14, SR-AT&T-1, and SR-MCI-1.

quoting from the Merger Guidelines at 32.¹²¹ In addition, the Advocate criticized VNJ for failing to present a study of demand or supply elasticity or other recognized determinant of market power in this proceeding. Id. at 117. Finally, as noted above, the Advocate asserted that following the reclassification requested in this proceeding, VNJ would be able to convert single line business customers into (unregulated) multi-line business customers through the offer of a second line at no charge, and thereby “completely” evade Board oversight. Id. at 117-118.

4. Statutory Criteria

With regard to the statutory criteria for reclassification, the Advocate also challenged the data and statutory interpretation presented by VNJ. In summary, the Advocate argued the following:

[a] smattering of ailing competitors does not satisfy the ‘presence’ standard ..., the absence of effective competition precludes a showing of like or substitute services, and substantial barriers to entry continue to present competitors from entering the market.

[RPAb at 118].

The Advocate contended that VNJ’s argument that long distance carriers with existing customer relationships are present in the market if they can rapidly provide local service, and that competitors may be present in the market even where they have not yet begun offering the product in the relevant geographic area, is inconsistent with the statutory criteria for reclassification. Id. at 118-119. The Advocate characterized VNJ’s case regarding competitive presence as one based on “conjecture” and an impermissible broadening of the statute. The Advocate asserted that the small number of competitors VNJ had identified were fading from the market, and that competition in multi-line business services had not yet developed in the State. Id. at 119-121.

The Advocate argued that the availability of like or substitute services is a separate criterion requiring the presentation of evidence separate and distinct from that demonstrating the presence of competitors. Id. at 121. Again, the Advocate relied on its witness’s experience in attempting to obtain high speed T-1 service through a competitor in Massachusetts as evidence

¹²¹ See also RPAb at 127 (arguing that a “market share” approach would be consistent with that taken by the FCC in 1995 when it declared AT&T to be a non-dominant carrier).

of the difficulty of obtaining like or substitute services in New Jersey. Ibid. As with regard to the presence of competitors, the Advocate asserted that in order to satisfy the statute, like or substitute services must be currently available, and that a showing that such services are available or can be made available in a short time is insufficient. Ibid. Finally, the Advocate asserted that it was “confirmed” in VNJ’s recently concluded section 271 proceeding that VNJ’s claims of geographically-distributed facilities-based competition were false and that a majority of the State remained subject to exercises of monopoly power by VNJ. Id. at 122.

With regard to the statutory provision requiring “ease of market entry,” the Advocate referred to the Merger Guidelines in stating that market entry is “easy” if it would be “timely, likely and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern.” Id. at 122, quoting from the Merger Guidelines at § 3.0. The Advocate asserted that what it describes as the Company’s “anecdotal evidence” of the existence of “some” competitors in “some” regions of the State does not prove the absence of barriers to entry. Id. at 122-123. The Advocate relied on the testimony of its witness, Dr. Selwyn, who opined that the presence of some competitors in key New Jersey markets does not confirm that competition is flourishing in New Jersey or that competitors are not continuing to confront formidable barriers to entry. Ibid., referring to RPA-20A at 127. In particular, the Advocate contended that UNE rates are unproven, competitors lack access to Verizon-NJ OSS systems, customers have inertia in switching local providers, and that VNJ is the price leader at the retail level. Id. at 123.

The Advocate also contended that reclassification should not be granted if VNJ cannot demonstrate that competition exists in each wire center throughout the state. Id. at 123-124. The Advocate charged that the Company “improperly alter[ed] the scope of the [Board’s] inquiry” by asserting that the relevant geographic area of concern is the entire State of New Jersey. Ibid. The Advocate argued that the existence of competition in one community does nothing to protect consumers in a different community where no alternative provider presently offers service. Ibid., referring to RPA-20A at 96-97.

5. Augmentation of Criteria

Finally, the Advocate proposed that the Board use this docket to open a formal proceeding to establish service reclassification criteria beyond the minimum criteria set forth in N.J.S.A. 48:2-21.19b. Id. at 124-125. The Advocate recommended seven specific criteria to “augment” the

minimum criteria set forth in the reclassification statute. Id. at 125-134. In particular, the Advocate proposed the Board “begin” with the addition of the following criteria: (1) the presence of effective competition, including the ability of competitors to offer services at competitive prices, terms and conditions; (2) a requirement that UNE rates be set at levels that reflect economic cost; (3) compliance with the section 271 competitive checklist; (4) the existence of a requirement for service-by-service reclassification; (5) the absence of an adverse effect on other services; (6) the availability of prompt and effective dispute resolution for competitors (including formal procedures proposed and mandated by the Board); and (7) the existence of air tight service quality measures with attendant penalties for noncompliance. Ibid.

With regard to the first of these additional proposed criteria, the Advocate suggested that the Board implement its own competition-monitoring program, “in order to obtain a clear and evolving picture of the true state of competition in New Jersey.” Id. at 127. The Advocate recommended that the Board utilize a customer survey program to better assess the arguments regarding the state of actual competition in the State. Ibid., citing the PAR-1 Order at 133. Regarding UNE prices, the Advocate urged that the Board only permit reclassification when it is certain that competitors have a “proper opportunity to compete via UNEs,” meaning that cost-based rates have been approved by the Board and properly implemented by VNJ, and the UNE platform (UNE-P) is available in the relevant geographic areas. Id. at 129-130. The Advocate also argued that reclassification should be denied until a showing of full compliance with the section 271 checklist is made. Id. at 130-131.

With regard to the services sought to be reclassified, the Advocate recommended that the Board weigh compliance with the reclassification standards on a “service – specific basis” in order to avoid the risk, present in an en masse reclassification such as now proposed by the Company, that services not experiencing competition may be “masked” by those that are. Id. at 131. The Advocate also urged the Board to require that reclassification of a service have no adverse effect on any other service, and repeated its concern that with reclassification of multi-line services, VNJ could effectively avoid regulation of single-line business services by offering a free second line to its single-line customers. Id. at 131-132.

With regard to dispute resolution, the Advocate contended that “New Jersey has been without a formalized dispute resolution procedure [from the approval of the Board's Generic Order on December 2, 1997 in Docket No. TO95120631] through the present, and urged the Board to

make “prompt and effective dispute resolution mechanisms ... available to competitors in their dealings with Verizon-NJ.” Id. at 132-133. Finally, the Advocate urged the Board to mandate that reclassified services meet stringent service quality standards based on the best practices of similar carriers, and back by strong, self-effectuation penalties. Id. at 133-134.

D. AT&T Position

AT&T argued that, in light of the language of N.J.S.A. 48:2-21.19b, a petitioner seeking reclassification “must demonstrate current competition for a service . . . , not simply allege that competition will develop sometime in the future.” AT&Tb at 14-15. According to AT&T, VNJ has demonstrated only that competition exists in certain niche, large business markets for services that previously were declared competitive, but has not established the fact of present, actual competition for its rate-regulated business services, including particularly services for small businesses with between 2 and 20 lines. Id. at 15. AT&T asserted that VNJ’s failure to distinguish between the overall existence of competition for multi-line business services, and the actual competition for its rate-regulated business services is fatal to its case. Ibid., referring to AT&T-76 at 43-50.

1. Presence of Competitors

Citing the Board’s 1993 Order approving VNJ’s initial PAR, AT&T pointed out that the Board has indicated it will examine whether the market concentration is such that a service is “sufficiently competitive” and whether there is a “significant presence of competitors.” Id. at 16, citing to the PAR-1 Order, supra, at 134. According to AT&T, in rejecting New Jersey Bell Telephone Company’s efforts in the PAR-1 proceeding to dilute the statutory reclassification standards and in approving PAR-1, the “Board ... signaled that competitive treatment would be permitted only where there is a significant presence of competitors actually operating within a relevant market.” Id. at 16-17 (emphasis in the original). Like the Advocate, AT&T argued that in order to prove its case, VNJ must show the presence of competitors for small, medium and large customers of its rate regulated local business services throughout the State, i.e., in each of its wire centers. Id. at 17-18. Citing the Board’s “Investigation Report” issued in July 1998,¹²² AT&T pointed out that a sufficient marketplace presence of actual competitors providing services throughout

¹²² Status of Local Competition, Report and Action Plan, I/M/O Board’s Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket No. TX98010010 (1998 New Jersey Report).

VNJ's New Jersey wire centers requires more than "the mere existence" of certified CLECs or the "existence of authorized resellers," and argued that the Board, in this proceeding, should analyze data comparable to that reviewed in the 1998 investigation regarding VNJ's line losses and competitors' actual provision of local business services. Id. at 18.

AT&T argued that VNJ has failed to identify competitors offering services that compete with the rate-regulated services at issue that are present throughout the State, and has not provided direct evidence regarding, or a "link" between the provision of the rate-regulated services at issue and the particular competitors, means of provisioning (e.g., resale, UNE-P, facilities-based), and/or the purported evidentiary basis (e.g., E911 data, line loss data, ported numbers, collocation) identified. Id. at 20-21, 23-24. AT&T stated, as examples, that the presence of resellers in a wire center is "meaningless" because VNJ has not established that the resellers have a substantial presence providing like or substitute services, that there was no showing that ported numbers were used for like or substitute services, and that VNJ admittedly does not know what services are provided by the claimed collocation arrangements.¹²³ Like the Advocate, AT&T pointed to the alleged low levels of market penetration achieved by competitors, as evidenced by VNJ's line loss, resale, and UNE-P data, and particularly with respect to small and medium sized customers. Id. at 22-23.

AT&T asserted that the "minimal CLEC presence is not surprising given the barriers to entry ... and the well-documented financial difficulties of CLECs." Id. at 24. Focusing on the "financial difficulties of CLECs," AT&T argued that "VNJ's claim that some other, unnamed company may in the future purchase [the] assets [of a bankrupt CLEC] and then use those assets to provide substitute services is nothing more than unsupported speculation." Ibid.

AT&T also criticized as "misleading and conclusory" VNJ's estimate of CLEC investment in telecommunication plant investment in New Jersey, on the ground that it is an unreliable estimate of four years of investment based on national data, and includes investment made for several purposes, including the provision of local service. Id. at 29-30. AT&T also asserted that alleged "monopoly profits" realized by VNJ on the services it seeks to reclassify "demonstrate VNJ's ongoing market power and belie any claims of meaningful competition." Id. at 30, referring to AT&T-61 at 8, AT&T-17 and 4T875.

¹²³ Id. at 23-24, referring to AT&T-25, AT&T-26 (VNJ Response to RPA -268 and RPA -329), and AT&T-83 at 14.

AT&T contended that the survey response data and customer interviews presented by VNJ, were offered as a substitute in light of VNJ's alleged "lack of direct evidence." Id. at 24-25. AT&T argued that none of data established the presence of competitors. Id. at 25. According to AT&T, VNJ's "surrogate" survey data suffered from two fatal defects: (1) failure to analyze the presence of competitors for the rate-regulated business services that VNJ seeks to reclassify; and (2) failure to establish competitors' actual provision of local services to and purchase of local services by business customers. Ibid. In addition, AT&T claimed that VNJ's customer interviews were conducted with an "inherently biased" group of customers, and both the results and VNJ's reporting of the results of those interviews was biased. Id. at 25-26. AT&T also identified several alleged errors in the design, execution, and interpretation of VNJ's surveys of business customers, including the fact that (1) survey questions concerning competitive local service activities fail to distinguish between competitors' local services that compete with services already reclassified as competitive and those that compete with the rate regulated services at issue here; (2) the survey fails to ask whether customers are actually purchasing local services from competitors; (3) only a small percentage of respondents, in AT&T's view, indicated that (a) they are very likely to consider purchasing or are already purchasing local service from competing entities, and/or (b) they had been marketed to by competitors. Id. at 26-29, referring to VNJ-1, Attachments 14 and 15.

2. Availability of Like or Substitute Services

As noted above, AT&T argued that VNJ must, but has failed to, demonstrate the presence of competitors that currently and successfully provide like or substitute services for each of the more than 40 services that VNJ seeks to reclassify. Id. at 31. AT&T contended that the existence of filed CLEC tariffs and the presence of CLEC fiber do not demonstrate that the CLEC is actually providing a substitute for a rate-regulated service, but only that the service might be available or that the CLEC plans to use its facilities to provide some as yet undetermined telecommunications service. Id. at 31-32.

AT&T took particular issue with VNJ's reliance on customer losses only for its General Business customer class, which by definition includes only customers with monthly billed revenues of less than \$5,000. AT&T argued that since VNJ distinguishes between its General Business customers and its larger business customers for certain marketing and regulatory tracking

purposes, it must also provide separate evidence of competitors providing like or substitute services for these two groups of customers. Id. at 32-33.

AT&T repeated its claim that VNJ has not differentiated between whether the services offered by competitors are substitutes for the relevant rate-regulated services at issue in this proceeding or for services already deemed competitive. This alleged failure is “particularly acute,” in AT&T’s view, for small business customers with only 2 lines, who as a general matter do not use AT&T’s Digital Link service, a service that VNJ contends generally is a substitute for business customers but “in fact is only available to certain, generally large business customers.” Id. at 33-34, referring to VNJ-1 at 81-82 and AT&T-80 at 41. Finally, AT&T asserted that resellers currently serve a very small percentage of the market and do not provide a meaningful competitive alternative, and that VNJ has not presented sufficient evidence that competitive alternatives are provided by cable telephony, internet service, and fixed wireless services.¹²⁴

3. Ease of Market Entry

AT&T argued that the Company had not presented evidence establishing the existence of ease of market entry. Id. at 35. In fact, according to AT&T, barriers to entry remain, including the alleged high cost of accessing and interconnecting with VNJ’s network and the operational and financial difficulties of providing facilities-based services to small and medium sized customers. Id. at 35-36. AT&T specifically identified allegedly high UNE rates, problems related to access to VNJ’s OSS, and generalized “operational and financial constraints to enter and remain in the local market.” Id. at 35-37, referring to AT&T-63 and 2T327-331.

E. WorldCom Position

WorldCom argued that the Board is not limited to the three statutory factors in developing standards of competitive service and evaluating VNJ’s reclassification proposal. WCb at 17. WorldCom argued that the statute requires the Board to develop standards, and “it is both necessary and appropriate for the Board to use market share data to assess whether or not services are competitive. Id. at 17-18. WorldCom asserted that “market share and other measures of market power” are already considered by the Board in monitoring the competitiveness of service under its rules. Id. at 18, citing N.J.A.C. 14:10-5.10. WorldCom also

¹²⁴ Id. at 34-35, referring to AT&T-63 at 12, AT&T-26 (VNJ Response to discovery request AT&T –7), 2T484, 2T447-448.

emphasized that VNJ's "dual role" as both a retail service provider and as the provider of network facilities upon which competitors are dependent provide VNJ with both the opportunity and ability to discriminate against its competitors in favor of its own retail offerings. Id. at 19. WorldCom urged the Board to "take steps [to] address" that dual role, and advised that both resolution and implementation of "all outstanding local competition issues" are necessary before consideration of VNJ's request. Ibid.

With regard to the three statutory criteria, WorldCom asserted that VNJ (1) has only presented "evidence of potential competitors and financially troubled carriers" insufficient to demonstrate actual presence of competitors and substantial competition; (2) improperly relies on customers' perceptions of the market rather than the reality of the market; (3) presents a view of the market improperly encompassing both regulated and non-regulated services; and (4) views the entire State of New Jersey rather than specific wire centers or exchanges as the relevant geographic area for purposes of determining the availability of like or substitute services. Id. at 19-20.

1. Ease of Market Entry

WorldCom asserted that Verizon's evidence regarding the use of its UNEs and the Board's UNE-P policies, and data on the number of authorized local competitors, competitors with tariffs, and approved interconnection agreements, do not establish ease of market entry. Id. at 20. According to WorldCom, the pricing of UNEs, the primary barrier to competitive entry in New Jersey, has not been fully resolved. Id. at 21. WorldCom argued that the Board could not find that there is ease of entry for competitors prior to the ultimate resolution of issues surrounding access to availability of UNEs (including UNE-P), as well as proof of the commercial viability of VNJ's OSS and the implementation of an effective performance incentive plan. Id. at 21.

2. Presence of Competitors

WorldCom, in positions similar to the Advocate and AT&T, argued that VNJ's showings regarding the active selling and reselling of the services in question, the deployment of network facilities, collocation, the existence of customer relationships, and customer perceptions are not sufficiently substantial to satisfy the statutory presence of competitors criterion. Id. at 21-22. For example, WorldCom noted that only 18 of 57 facilities-based certificated carriers referenced by the Company have the Board – approved tariffs in place needed to actually provide service. Id. at 22. WorldCom also pointed out that VNJ has included in its analysis companies that have

discontinued providing local service in New Jersey and that are “in serious financial distress.” Ibid. According to WorldCom, the 18 carrier tariffs on file contain only 32 of the 45 services for which reclassification is requested. Id. at 23. WorldCom also argued that VNJ’s use of collocation data is flawed because it is not clear that all collocation arrangements are operational, or that all are used for voice traffic rather than data traffic. Ibid.

WorldCom also criticized VNJ’s survey methodology, which it alleged undermines the reliability of the data generated. Ibid. For example, WorldCom witness, Mr. Merwin R. Sands, asserted that the definition of local services in that survey is limited to “POTS” services, and could not encompass all multi-line business telecommunications services covered by the reclassification request. Ibid. Mr. Sands also criticized the survey for including single line business customers when they are not the focus of VNJ reclassification request. Id. at 24.

3. Availability of Like or Substitute Services

WorldCom argued that VNJ’s position with respect to the availability of like or substitute services is to a large degree based on the potentiality of competitors to provide service. Ibid. In particular, WorldCom argued that VNJ has been unable to persuasively show that fixed wireless and cable providers are today providing substitute services to New Jersey customers. Id. at 25.

F. NJCTA Position

The NJCTA argued that, in order to properly determine whether a service should be reclassified as a competitive service, the Board is required to consider factors in addition to the three reclassification criteria set forth in N.J.S.A. 48:2-21.19(b). CTA_b at 7-8. The NJCTA warned that “premature reclassification” would harm the public interest by reducing incentives for competitive entry and enhancing barriers to entry. Id. at 11-12. NJCTA “stated that the Board must therefore weigh the potential harms to consumers and competitors against the benefits of reclassification. Id. at 12-13. The NJCTA asserted that the dangers of premature reclassification are heightened by the fact that VNJ has not performed any studies to assess the impact of reclassification. Specifically, NJCTA argued that the Company has done no analysis to quantify the post-reclassification “restraints on Verizon’s ability to raise prices above competitive levels.” CTA_b at 13-14.

NJCTA argued that the extent of the regulatory freedom under the New Jersey statutes dealing with reclassification that is sought by VNJ goes well beyond that provided under federal rate flexibility and forbearance orders. Id. at 9-10. NJCTA also argued that even if the Board were to conclude that VNJ has met the requirements of Section 271 in New Jersey, that action does not provide a basis for grant of its reclassification request herein. Id. at 10. According to NJCTA, the issue in the federal statute is whether Verizon has taken the 14 legally required steps to open its local market to competition, and whether the request otherwise is in the public interest. Id. at 10-11. That showing, according to NJCTA, could be accomplished even in the absence of present competition for local service, while in this proceeding, the Board must decide “whether the market for multi-line business exchange service is sufficiently competitive *now* such that market forces, rather than the Board, will establish just, reasonable and nondiscriminatory rates and practices for local service for all affected consumers and competitors.” Ibid. (emphasis in the original).

1. Division of the Local Business Market for Regulatory Purposes

The NJCTA opposed VNJ's proposal to reclassify all but single-line business services. Id. at 14-16. NJCTA argued that the Company had failed to explain or justify why its proposed reclassification was intended for all but single-line service. Id. at 14. According to NJCTA, single line customers comprise approximately 3% of VNJ's business customers, and, therefore, approval of VNJ's petition would free the Company of all regulatory oversight over approximately 97% of its business customers. Id. at 15. NJCTA noted that even the smallest business customers may well have two lines. Ibid. In addition, NJCTA expressed concern that there was no evidence that regulatory agencies in other jurisdictions have used a one-line point of demarcation to determine the manner in which local business service is regulated. Id. at 15-16. Rather, NJCTA pointed out that in a reporting form filed semi-annually with the FCC by local exchange carriers so the agency may monitor the development of local competition, carriers are required to identify the percentage of total end-user lines represented by a category that combines residential and small business customers, which the FCC defines as businesses with fewer than four lines.¹²⁵ NJCTA also pointed out that in its Local Competition Proceeding,

¹²⁵ Id. at 16, referring to CTA-1 at 13. See Report and Order, I/M/O Local Competition and Broadband Reporting, cc Docket No. 99-301, FCC 00-114 (March 30, 2000) (hereinafter, Local Competition Reporting Order) at ¶ 77.

the FCC used four lines as the demarcation point at which ILECs must offer local switching as an unbundled network element in certain markets.¹²⁶

2. Ease of Entry

With regard to ease of entry, NJCTA argued that the Board “must of necessity review the barriers to entry that the Board found to exist in its 1998 report on the status of local competition.”¹²⁷ NJCTA noted that in the 1998 New Jersey Report the Board found that the two major barriers to local exchange market entry were the lack of standardized OSS and lack of access to UNEs. Id. at 17. NJCTA urged the Board to not limit its analysis of VNJb reclassification petition to those two barriers to entry, and noted that the removal of barriers frustrating market entry by resale and UNE-P does not ensure the viability of facilities-based competition. Ibid. With regard to access to UNEs, NJCTA noted the lack of a final order in the Board’s UNE proceeding in Docket No. TO00060356,¹²⁸ raised questions regarding VNJ’s compliance with Board directives, and stated that future court proceedings that “may delay a final resolution of the issues surrounding UNE rates and conditions.” Id. at 17-18. NJCTA recognized that recent test results show “considerable progress” in VNJ’s OSS performance since the Board’s 1998 New Jersey Report. However, NJCTA asserted that the record in this proceeding is insufficient to assure full commercial availability of OSS functions, and concluded that remaining uncertainties in this respect preclude a finding that OSS is no longer a barrier to entry. Id. at 18-20.

NJCTA also noted several other barriers identified in the 1998 New Jersey Report. Id. at 20-25. NJCTA asserted that because of the limited experience with the porting of telephone numbers, the Board should confirm that it is not an impediment to competition. Id. at 20. NJCTA also stated that the absence of an expedited process for dispute resolution was a significant barrier to competition. Id. at 20-21. NJCTA also asserted there was a lack of regulations ensuring that interconnection agreements are promptly and fairly renewed. Id. at 21-22. According to NJCTA, there also was an absence of “enforcement mechanisms,” including performance

¹²⁶ Ibid., citing Third Report and Order and Fourth FNPR, I/M/O Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, cc Docket No. 96-98, FCC 99-238 (November 5, 1999) at ¶¶ 293-294.

¹²⁷ Id. at 17, referring to the Status of Local Telephone Competition: Report and Action Plan, Docket No. TX98010010 (July 1998) (hereinafter, 1998 New Jersey Report).

¹²⁸ In its initial brief, NJCTA referenced the Board’s issuance of a summary order in this Docket. See Summary Order of Approval, I/M/O the Board’s Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Docket No. TO00060356 (December 17, 2001). Subsequently, on March 6, 2002, the Board issued its final Order in this Docket.

standards and self-executing remedies, to ensure that the evolution of competition is accomplished in a fair manner. Id. at 22-23. Finally, NJCTA suggested that VNJ's subsidization of the low price of local residential service was a barrier to entry. Id. at 24-25.

3. Presence of Competitors

NJCTA criticized VNJ's survey results that were offered as evidence of the presence of competitors. Id. at 25-27. Focusing on the percentage of respondents who had indicated that they did not have choice of more than one company from which to purchase local services, NJCTA contended that VNJ's survey data show that "a significant number of businesses are not aware of competitors from which they can obtain local service. Ibid.

NJCTA also criticized VNJ's alleged reliance the number of carriers authorized to provide local service in New Jersey, arguing that "CLEC presence nationally has weakened in the past year."¹²⁹ As did other opponents of VNJ's reclassification petition, NJCTA pointed to negative news reports regarding the financial strength of the CLEC industry, and identified certain competitors, such as Winstar and Teligent, that have suffered financial troubles. Id. at 27-28. NJCTA also challenged the bases of the evidence of competitive presence presented by VNJ, e.g., E911 listings, ported numbers, NXX code assignments, and collocation. NJCTA's criticisms included assertions of the underutilization of blocks of NXX codes; the allegedly low number of ported numbers in New Jersey as compared with Pennsylvania, and the allegedly low number of UNE loops and UNE-P arrangements in New Jersey as compared with Massachusetts. Id. at 29. NJCTA also questioned the value of E911 data because, according to NJCTA, some CLEC lines may reflect service being provided by private lines or DS-1 lines, services that are not provided to small businesses, or are associated with services already classified as competitive. Id. at 29-30. With regard to the number of resold lines, NJCTA argued that the Board should "view this indicator with caution" because resellers, who have invested little capital upon entering the market, can quickly leave the market without significant financial loss. Id. at 30. NJCTA also asserted that the existence of interconnection agreements was a poor measure of competitive presence because some of CLEC parties to those agreements may not be offering competitive business services, or may in fact not even be operational. Id. at 31-32. NJCTA also contended that there was a lack of evidence that there

¹²⁹ Id. at 27, referring to NJCTA-1 at 24, and data contained in the FCC's May 2001 report, Local Telephone Competition: Status as of December 31, 2000.

are collocation arrangements in every wire center, as well as a lack of evidence as to precisely what existing collocation arrangements are used for. Id. at 32-33.

NJCTA argued that a reliable indicator of whether there is a competitive presence in this case is “the extent to which end-users are actually receiving service from a competitor and how quickly competitors are able to expand their presence,” i.e., market share data. Id. at 34. NJCTA asserted that the best source of local market data is found in the semi-annual reports that are filed by local carriers with the FCC, and that based on that data, competition for local service in New Jersey, especially for small business, is insufficient to justify reclassification. Id. at 35-37, referring to NJCTA-1 at 29-30.

4. Availability of Like or Substitute Services

With regard to the availability of business services from competitors, NJCTA argued that “Verizon's own evidence shows is that there are significant areas in New Jersey where competitors are not operating with any degree of permanence or vigor.” Id. at 37. In response to VNJ's claim that competitors serve small business customers and are reselling VNJ's service in all of its 204 wire centers, NJCTA recommended that the Board “should give little weight to resold . . . lines in connection with the reclassification request,” presumably because resellers are, in the NJCTA's view, simply providing a Verizon product and thus are limited in what they can offer or the price at which it can be offered. Id. at 31, 38. Finally, NJCTA asserted that none of the various indicators of competition that VNJ presented, i.e., E911 listings, NXX code assignments, ported numbers, and lines lost to competitors, clearly establish that competition is presently available in every wire center. Id. at 38-40.

G. Discussion

1. Overview, Standards for Reclassification

We note at the outset that several parties have taken the position that the Board is required by the 1992 New Jersey Act to consider standards for reclassification in addition to the three set forth in N.J.S.A. 48:2-21.19b.¹³⁰ We disagree for several reasons. We do not believe that the language of the 1992 New Jersey Act requires more than the standards set forth in N.J.A.C. 48:2-21.19b. The statute provides the following:

¹³⁰ See RPA at 103-104; AT&T at 16-17; WCB at 17-18; WCrb at 2, 14; CTA at 7-8.

[I]n making such a determination [as to whether a telecommunications service is a competitive service], the [B]oard shall develop standards of competitive service which, at a minimum, shall include evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area.

[N.J.S.A. 48:2-21.19b].

The use of the term, “at a minimum,” signifies that the Legislature required that the Board’s standards for reclassification include the three articulated standards. However, this language cannot be read to require that the Board adopt additional standards. The language of the statute must be read to require the minimum, but not to expressly require more than the minimum. The Legislature wisely left it to the Board’s expertise to decide whether a petition for reclassification of a rate-regulated service to a competitive service (or approval of a new service as a competitive service) must be judged according to the three minimum statutory standards or more than the minimum.

In fact, during the PAR-1 proceeding, and in response to the Company’s pre-filed testimony recommending specific reclassification standards for inclusion in PAR-1, the Board was called upon to decide this issue. In its PAR-1 pre-hearing Order, the Board determined it had the discretion to do so in the course of the PAR-1 proceeding. See PAR-1 Order at 127-128. The Board ultimately rejected the Company’s proposed standards, and voiced its concurrence “with those parties who have argued that the plain meaning of the [1992 New Jersey] Act compels the conclusion that all three criteria contained in the Act must be met in order to determine that a service is competitive.” PAR-1 Order at 132-134. With regard to additional standards such as “market share,” “an economic measure of concentration,” or “any other economic indicator,” the Board reserved the right to use any standard in determining the competitiveness of services. Thus, the Board clearly stated that the three “minimum” statutory standards were required, but others might also be used by the Board if, in its discretion, it determined it was appropriate to do so “in a given circumstance.” Ibid. The Board then modified the Company’s proposed plan to incorporate the minimum standards. Id. at 13.

Ultimately, the Board’s decision approving the modified PAR-1 plan was affirmed by the Appellate Division of the New Jersey Superior Court. Speaking for the unanimous Court, Judge Kestin wrote the following:

[o]ur review of the extensive record in the light of the arguments advanced by the parties discloses that the Board's action approving, in modified form, the plan proposed by petitioner was a proper exercise of the regulatory discretion committed to the Board's authority in the Act and other enabling legislation. We discern the Board's action to have been a fair implementation of the new regulatory regime embodied in the Act.

[In re Application of New Jersey Bell Telephone Co., supra, 291 N.J. Super at 88].

We note that no party to the appeal of the Board's decision approving PAR-1, not New Jersey Bell, VNJ's predecessor, not AT&T, MCI, NJCTA, and not the State's Division of Rate Counsel, the Ratepayer Advocate's predecessor, raised the issue of the Board's determination to approve the three statutory standards as the only "required" standards in the PAR-1 plan.¹³¹ Nevertheless, the Appellate Division was clear in voicing its broad approval for the Board's action:

[I]ndeed, there was ample evidence on all sides of every issue considered by the Board ... We are not at liberty to titrate the evidence in order to determine whether we would have made the same findings and reached the same conclusions as the Board did on the record before it. ... Rather, where there is substantial evidence on all sides of the issues addressed, no findings made or conclusions reached that are based on that evidence and are otherwise within the Board's discretionary authority will be seen to be arbitrary, capricious or unreasonable.

[Id. at 89; citations omitted].

Acknowledging the comprehensive nature of the PAR-1 plan, the unanimous Court stated the following:

[w]e need not address at any length the particular flaws isolated by appellants. With due regard for the Board's expertise, we are satisfied that there was ample basis in the record to support each element of the plan as approved.

[Id. at 91-92].

¹³¹ We note that, in the PAR-1 Order, the Board reserved the right to modify or supplement the standards based upon the outcome of a then ongoing rulemaking proceeding. That proceeding, however, never led to modification of the standards approved in the PAR-1 Order. See PAR-1 Order at 127-134.

In light of the Court's overwhelming and broad support of our approval of PAR-1, as modified by us to include, inter alia, the three minimum standards for determining a service to be competitive, the Board is convinced, and we so FIND, that the standards set forth in N.J.S.A. 48:2-21.19b are the appropriate and necessary standards by which to evaluate VNJ's petition for reclassification of its multi-line business services.

Accordingly, based on a thorough review of the evidence and arguments in the record, as well as its experience in evaluating and monitoring the results of numerous requests for the classification and reclassification of services as competitive, the Board is satisfied that the three criteria set forth in N.J.S.A. 48:2-21.19b – ease of market entry; presence of other competitors; and the availability of like or substitute services – are appropriate criteria for assessing this reclassification proposal. As VNJ has correctly pointed out, the Board has successfully reclassified or classified services as competitive in several previous cases based only on the three statutory criteria. Specifically, the Board has reclassified Message Telecommunications Services, Digital Data Service and Digital Connect Service as competitive; and has classified seven new services as competitive, all under the statutorily-prescribed standards set forth in 1992 NJ Act.¹³² In addition to reclassifying the above services as competitive, the Board has also approved the introduction and classification of seven new services as competitive, including Virtual Private Network Service, Frame Relay Service, Exchange Access Frame Relay Service, Switched Multimegabit Data Service, Exchange Access Switched Multimegabit Data Service, Call Restriction Service, and Phone Card. In each of these cases, the Board has found these same three criteria to be a sufficient basis for classification of the approved service as competitive.¹³³

¹³² I/M/O Investigation of IntraLATA Toll Competition For Telecommunications Services On a Presubscription Basis, Docket No. TX94090388, Decision and Order, (May 28, 1997), at 1. I/M/O Filing by Bell Atlantic-New Jersey, Inc. For the Reclassification of Existing Rate Regulated Services -Directory Assistance Services as Competitive Services, Docket No. TT97120889, Order of Approval, (September 14, 1999), at 4. I/M/O Filing by Bell Atlantic-New Jersey, Inc. For the Reclassification of Existing Rate Regulated Services – Digital Data Service and Digital Connect Service, Docket No. TO96080613 (December 30, 1997), at 3.

¹³³ See I/M/O Filing by Bell Atlantic-New Jersey, Inc., of a Revision of Tariff B.P.U.-N.J.-No. 2, Providing for the Introduction of All @ once Virtual Private Network Service, Docket No. TT96070522 (December 30, 1997); I/M/O Filing by Bell Atlantic-New Jersey, Inc., of a Revision of Tariff B.P.U.-No.2, Providing for the Introduction of Exchange Access Frame Relay Service as a New Competitive Service, Docket No. TT97020091 (December 30, 1997); I/M/O Filing by Bell Atlantic-New Jersey, Inc., of a Revision of Tariff B.P.U.-N.J.-No. 2, Providing for the Introduction of Frame Relay Service as a New Competitive Service, Docket No. TT96090650 (December 30, 1997); I/M/O Filing by Bell Atlantic-New Jersey, Inc., of a Revision of Tariff B.P.U.-N.J.-No. 2, Providing for the Introduction of Exchange Access Multimegabit Data Service as a New Competitive Service, Docket No. TT97020089 (December 30, 1997); I/M/O Filing by Bell Atlantic-New Jersey, Inc., of a Revision of Tariff B.P.U.-N.J.-No. 2, Providing for the Introduction of Switched Multimegabit Data Service as a New Competitive Service, Docket No. TT96090651 (December 30, 1997); I/M/O Filing by Bell Atlantic-New Jersey, Inc., of a Revision of Tariff B.P.U.-N.J.-No. 2, Providing for the Introduction of the Bell Atlantic Phone Card, Docket No. TT94120613 (February 22, 1995); I/M/O Filing by New Jersey Bell Telephone Company B.P.U.-N.J.-No. 2, Providing for the Introduction of Call Restriction Service, Docket No. TT93050160 (July 6, 1993).

We agree with the Company that the evidence offered by VNJ of competitive presence, availability of like or substitute services, and ease of entry is the type of evidence widely recognized and relied on by regulators and economists to evaluate the extent of competition.¹³⁴ We believe that NJCTA's allegation that VNJ has failed to expressly quantify post-reclassification restraints on VNJ's ability to raise prices, and the Advocate's call for additional "practical" evidence of competitors' abilities to provide alternative services unessential and extraneous to our analysis of the Company's request. Moreover, we believe that the type of evidence in the record specifically addresses those concerns. For similar reasons we reject the Advocate's proposal to "augment" the statutory criteria with vague requirements involving "the presence of effective competition." Finally, we also reject the efforts of the Advocate and WorldCom to render this reclassification inquiry dependent on other, separate proceedings, e.g., to resolve and implement all UNE rate issues and "all outstanding local competition issues" before considering this request. Such an approach, we believe, would be contrary to the requirements of the 1992 New Jersey Act, and moreover would be wholly unnecessary in light of the inquiry undertaken here.

Furthermore, we are convinced that the expansion of the statutory criteria to include traditional antitrust tests of market power and considerations of "market share" would be inappropriate in this proceeding. We are persuaded that a firm's market share and market power may be distorted where, as here, local service prices have been maintained at prices below competitive levels.¹³⁵ It would also be inconsistent with prior statements of AT&T acknowledging the limitations of market share analysis. In its petition to the FCC to be reclassified as a non-dominant common carrier, AT&T argued, as characterized by the FCC, "that market share figures based solely upon output – rather than total available capacity – distort the importance of market share as an indicator of market power."¹³⁶ Furthermore, AT&T's witness, Dr. Lehr, has recognized the significance of the three statutory criteria in stating that "ease of market entry, presence of other competitors, and the availability of like or substitute service in the relevant geographic area ... form the core of an analysis to determine if a firm has market power." See AT&T-78 at 21-22.

¹³⁴ See discussion of statutory criteria, infra.

¹³⁵ See VNJB at 89-91. See also Landes and Posner, "Market Power in Antitrust Cases," 94 Harv. L. Rev. 937, 975-976 (1981) (inappropriate to infer market power where a large market share is a result of an artificially created low price).

¹³⁶ See Order, I/M/O Motion of AT&T to be Reclassified as a Non-Dominant Carrier, FCC 95-427 (October 23, 1995) (hereinafter, AT&T Reclassification Order) at ¶ 42.

In addition, the Board notes that in its decision declaring AT&T to be a non-dominant carrier, the FCC was particularly circumspect with regard to the use of market share as an indicator of the competitiveness of a market.¹³⁷

As a general matter, the Board believes that the reclassification requested by VNJ, with some modifications, is consistent with the technological, regulatory, and economic evolution of competitive telecommunications markets, as well as with economic principles underlying the reclassification of service. In particular, it is clear to the Board that the regulatory policies embodied in the Telecommunications Act of 1996 (1996 Act) and the 1992 New Jersey Telecommunications Act are intended to open all local exchange markets to competition. The 1996 Act requires ILECs to resell their services, interconnect with competitors' facilities, offer UNEs and collocation, and provide intraLATA dialing parity and number portability. Pursuant to these policies, this Board has certified numerous telecommunications companies to compete in the local land line market, has approved interconnection and resale agreements between ILECs and CLECs, has established resale rates and interconnection rates, and has approved tariff filings submitted by numerous CLECs. In addition, the various unbundling and interconnection requirements of the 1996 Act and the non-discrimination requirements established by the 1992 New Jersey Act ensure that competitors will not be disadvantaged relative to VNJ for access and interconnection.

Based on the evidence presented in this proceeding, much of which was also developed and confirmed in VNJ's Section 271 proceeding, the Board FINDS that competitive presence, however measured, has increased since the issuance of our Investigation Report in July 1998. This is particularly true with regard to medium and large business customers.

2. Presence of Competitors

Having carefully reviewed the voluminous data presented by VNJ, and having considered the challenges to that data presented by the opposing parties, the Board FINDS that (1) there are CLECs present in New Jersey today, selling business services in competition with the services that VNJ would have the Board reclassify;¹³⁸ (2) many of these CLECs have been in business in

¹³⁷ See AT&T Reclassification Order, *supra*, at ¶¶ 58, 68 ("market share alone is not necessarily a reliable measure of competition, particularly in markets with high supply and demand elasticities").

¹³⁸ See VNJ-1 at 41-43; VNJ-3 at Attachment R2.

New Jersey for an extended period of time and are substantial, well-established companies;¹³⁹ (3) the number of business lines served by these companies has continued to increase;¹⁴⁰ (4) competitors are present throughout VNJ's service territory; (5) resale is occurring in each wire center, and multiple resellers are present selling business lines in each wire center;¹⁴¹ and (6) Verizon has lost business lines in the vast majority, of its wire centers.¹⁴²

With regard to the evidence presented by the Advocate, AT&T, WorldCom, and the NJCTA regarding the financial difficulties encountered by specific CLECs, the Board is not persuaded that such evidence is sufficient to undermine the widespread evidence of the presence of competitors in New Jersey. The Board considers the financial problems of individual competitive providers to be a normal part of the competitive process and a result of the recent general economic recession, rather than evidence that competition does not exist. Moreover, the Board agrees with VNJ that even in those cases where a facilities-based carrier files for bankruptcy and/or is purchased by another carrier, its facilities remain in place to be used in competition with VNJ's facilities. The Board notes in particular that Covad exited bankruptcy on December 20, 2001 with restructured funding,¹⁴³ and that the record indicates that AT&T has acquired NorthPoint's assets and plans to use these assets to provide local voice services.¹⁴⁴ We therefore reject AT&T's assertion that the acquisition and use of the facilities of failed CLECs is "nothing more than unsupported speculation," as well as the Advocate's characterization of VNJ's case regarding competitive presence as "conjecture" based on "a smattering of ailing competitors."

Based on our review of the evidence, since the release of our July 1998 Investigation Report, competitors have grown in terms of revenue, geographic reach, and numbers of service lines; and are better able to take advantage of economies of scale and scope. The Board therefore FINDS that there is competitive presence in New Jersey, and that the underlying evidence satisfies this criterion for reclassification.

¹³⁹ See VNJ-1 at 43.

¹⁴⁰ See VNJ-1 at 44-47, VNJ-3 at 31-32.

¹⁴¹ See VNJ-1 at 41-44, 47-49, and Attachment 4 and VNJ-3 at 29, 31-32, 38-42 and Attachment R1.

¹⁴² See VNJ-1 at 53-54 and Attachment 4; VNJ-3 at 31, 37 and Attachment R1.

¹⁴³ See [http://www.covad.com/company info/pressroom/pr_2001/122001_press.shtml](http://www.covad.com/company%20info/pressroom/pr_2001/122001_press.shtml)

¹⁴⁴ VNJ-3 at 69-70.

We find support for this conclusion from VNJ's survey evidence. While several parties have argued to the contrary, we believe that survey responses indicating that some business users are not aware of specific competitive alternatives do not negate the fact that many respondents are aware of those alternatives. We FIND persuasive the testimony of VNJ witness Dr. Taylor, who stated during cross-examination that:

[c]ompetition takes place at the margin, not at the average, and even though 80 percent of the people in this room don't know what the price of a tomato is, the fact that there are marginal people who do know means we can all go to the grocery store safely and buy tomatoes at the market price. You don't need 100 percent of the people to know exactly what is available at what price in order for market pressures to keep the price on market level.[2T517-518].¹⁴⁵

With regard to the various other challenges to the structure and interpretation of the survey, we consider these piecemeal criticisms – including the adverse parties' criticisms of the definition of the term "local services" used in the survey, and the claim that the survey should have focused on whether customers are actually taking service from alternative providers – to be insufficient to undermine the utility of the survey. As for the first point, we are persuaded that all of the services for which VNJ seeks reclassification are subsumed in the definition provided to respondents, because they either permit the customer to connect with the local telephone network, allow the customer to make and complete local calls, or are optional features that the customer can choose. Moreover, we recognize that VNJ's customer research results were intended to complement other data presented by the Company not to quantify the presence of competitors and the existence of substitute services. For the purposes for which it was presented, we consider the customer research results valuable to our inquiry. In this regard, we specifically note AT&T's characterization of VNJ's customer research as having been offered as a "substitute" for direct evidence. We neither perceive nor rely on it as such. The remaining criticisms of VNJ's survey results are generally unpersuasive because they are based on the adverse parties' misreading, misinterpretation, or mischaracterization of the survey results, or on misplaced emphasis on the number of respondents who are not aware of customer choice or who were not marketed to.

¹⁴⁵ See also 1T160 (what is significant is "the process of competition, the fact that the competitive process that is out there is working[,] and not the result of that process[,] which could vary from individual customers as to why they make a decision to go or to stay").

3. Availability of Like Or Substitute Services in the Relevant Geographic Area

With regard to this criterion, we note that under N.J.S.A. 48:2-21.19b, a party seeking reclassification must establish the “availability of like or substitute services,” separate and apart from its showing that there are viable competitors present in the market. However, the Board notes its agreement with VNJ that the same types of evidence may be used to establish satisfaction of both criteria. For example, the evidence presented on customers switching from VNJ to other competitors -- e.g., data on telephone numbers that are ported to other companies when customers leave VNJ, and data on service-specific line losses for the services at issue -- shows both that substitutes are available for the business services those customers purchased from VNJ, and that competitors are present providing those substitutes. The same logic applies to information regarding competitors marketing their services to VNJ business customers.

In this proceeding, VNJ has successfully met its burden to demonstrate the availability of like or substitute services in the relevant geographic area. First, VNJ has shown that substitutes are available for the services it seeks to reclassify through several means, including line loss data, resale data, the existence of approved tariffs, and other publicly available evidence of substitutes.¹⁴⁶ With regard to switched local services VNJ demonstrated that its competitors had successfully captured every one of the switched voice access services, i.e., basic exchange access and the local usage, PBX Trunks and Direct Inward Dialing (DID) terminations. See VNJ-1 at 72-74 and Attachment 10. These losses may be an understatement of customer line losses because they include only losses that the Company is able to track through the service order process that shows that a business customer left VNJ for a competitor, that is, they are losses involving resale, UNE-Ps and ported numbers. Id. at 74. They do not include losses from total bypass or losses of customers with monthly revenues of \$5,000 or more. Ibid. VNJ indicated that resale and tariff data show the existence of substitutes for its customer provided pay telephone service and its foreign exchange service. VNJ-1 at Attachment 10. With regard to VNJ’s four switched data services, Switched 56, ISDN BRI and ISDN PRI and IPRS, VNJ demonstrated that substitutes are available through resale, and through DSL and T1 service offerings. Id. at 75 and Attachment 11.

¹⁴⁶ See generally VNJ-1 at 70-83 and VNJ-3 at 45-49 VNJ-1 at Attachment 10 for a summary of this information by service. Attachment 7 to VNJ-1 presents the availability of each service as set forth in selected approved CLEC tariffs.

With regard to switched ancillary services, the record also shows that these services are “standard features of the modern switching systems that both [VNJ] and the CLECs use.” Id. at 78. VNJ's competitors have approved tariff offerings of virtually all of these services. Id. at Attachments 10 and 11.¹⁴⁷ With regard to VNJ's private line services, the Company has provided evidence of approved tariffs offering these services, or other evidence of their availability. The Board notes that as of February 15, 2001, CLEC switched business service tariffs included tariffed offerings for 32 of the 45 services presented for reclassification by VNJ.

Second, VNJ has demonstrated the almost universal availability of like or substitute services. Inferences about the ubiquitous availability of competitive business services can be drawn from several sources, including the numbers of lines served by wire center, the types of equipment used by competitors, the service offerings by competitors, and the types of customers lost by VNJ. See VNJ-3 at 46. We have just noted that as of February 15, 2001, 32 of the 45 services under consideration here for reclassification were being offered as tariffed service offerings by VNJ's competitors, almost all of which have tariffed service territories identical with that of VNJ. The Company has shown that resale of business services occurs in every one of its 204 wire centers, and that there are multiple resellers doing business in each wire center. VNJb at 101; VNJ-1 at 48. VNJ has demonstrated that its competitors have collocation arrangements present in at least 182 of its 204 wire centers that account for 98% of its business lines and revenues. VNJb at 103; VNJ-1 at 51. VNJ also demonstrated that, as of January 1, 2001, business numbers had been ported from VNJ to a competitor in 149 of its 204 wire centers. VNJ-1 at 52. VNJ suffered business line losses in 203 of its 204 wire centers. Id. at 53-54. Collectively, this information demonstrates persuasively that competitors for VNJ's business services and the business services themselves that are at issue here are being offered or are available throughout VNJ's service territory.

We note that there is no statutory or other requirement that a party seeking reclassification demonstrate that every method of competing with its services is present in every wire center. In this regard, we reject NJCTA's criticisms that like or substitute services are not available

¹⁴⁷ Four of VNJ's switched ancillary services (Switched Redirect, AFOD, Message Service Interface and Select Class of Call Screening) for which the Company acknowledged not having evidence of like or substitute services are de minimis in their significance to this filing as they represent only 1/3 of 1% of VNJ's revenues from all the services for which reclassification is requested. See VNJ-1 at Attachment 10. Nevertheless, because they are switched services, any company providing a dial tone can provide them. Several of VNJ's “other ancillary services” are combinations of other services for which substitutes have been shown to exist.

throughout the relevant market because none of the competitive measures identified by VNJ, other than resale, is literally available in every wire center. See NJCTA-1A at 30-31.

The Board also rejects AT&T's criticism that VNJ has not provided "direct evidence" of a "link" between the particular services at issue and the particular competitors means of provisioning, or evidentiary bases relied upon. On the contrary, VNJ in fact did provide a link between specific services and particular competitors in Attachment 7 to VNJ-1, which lists 13 tariffed CLECs (VNJ acknowledged it had left 7 additional CLECs with recently approved tariffs off the list) and cross-references each CLEC with the list of 45 services at issue here. And VNJ has, in fact also provided much information about its competitors, including their tariffed services and the means by which they provision their customers (see, e.g., VNJ-1, Attachment 11). Nevertheless, as we have just noted, there is no statutory or other requirement that every means of competing be used in every wire center to provide each of the like or substitute services for which reclassification is sought. Indeed, Congress wisely provided for and sought to encourage competition through each of the available means, facilities construction, lease of unbundled network elements, and resale by obligating incumbent LECs to provide interconnection, unbundled access, resale and collocation. 47 U.S.C. § 251. The FCC has acknowledged that Congress did not explicitly express a preference for one particular type of competitive arrangement, and has recognized that

there will be a continuing need for all three of the arrangements
Congress set forth in Section 251 to remain available to
competitors so that they can serve different types of customers in
different geographic areas

[Third Report and Order and Fourth Further Notice of Proposed
Rulemaking, I/M/O, Implementation of the Local Competition
Provisions of the Telecommunications Act of 1996, cc Docket No.
96-98, FCC 99-238 (November 5, 1999) (UNE Remand Order) at
¶ 5].

We also reject the claim of several parties that VNJ has only demonstrated the existence of substitutes for services already deemed competitive, in light of data showing, among other things, that a substantial percentage of the total line losses tracked are for POTS lines or PBX trunks not yet reclassified (see, e.g., VNJ-1 at 72-74), and that competitors are reselling VNJ

services that are substitutes for the relevant services (see, e.g., VNJ-1, Attachment 10).¹⁴⁸ We also FIND persuasive VNJ's argument that its customer research was designed to ensure, and did ensure, that the participants understood they were to be discussing available alternatives to VNJ's regulated business local telephone services, and not alternatives to services that are already competitive. VNJ-1 at 84-8. The Board is particularly not persuaded by the Advocate witness's anecdotal description of his efforts to acquire T-1 service from a competitive provider in Massachusetts. The Board considers an anecdote about a single incident in a different state to have no bearing on whether VNJ discriminates against competitive carriers or on the availability of like or substitute services in New Jersey.

The Board rejects AT&T's claim (AT&Tb at 33) that VNJ must provide separate evidence concerning rate regulated business services specifically available to large and to small business customers. To the extent that VNJ relied only on General Business customer losses, we agree with the Company that such reliance would actually understate the extent of competition.¹⁴⁹ We similarly reject as misleading the Advocate's contention (RPAb at 110) that VNJ's data on lines lost amount to only 4% of business lines in New Jersey because, as explained by VNJ, that percentage is the result of the division of a "subset of Verizon NJ's business customers - - that is, General Business customers - - by total business lines." See VNJrb at 74. VNJ's states that the line loss data in the record may understate the actual extent of competition, since that data includes only a subset of business customers and does not capture lines or services that were not provided before the customer left VNJ, losses from the total bypass of VNJ's network, or losses from customers with revenues of \$5,000 or more per month. Ibid., fn. 260. The Board also rejects the Advocate's concerns (RPAb at 111) that data on general business customers are tracked and reported using Billed Telephone Numbers (BTNs) rather than "customers" per se, causing an inflated "customer" loss count because one customer may have multiple billing addresses (i.e., multiple BTNs). For purposes of the statutory criteria underlying this reclassification inquiry, the Board believes that the relevant fact to be gleaned from VNJ's line loss data is that a CLEC is serving the location represented by the BTN.¹⁵⁰

¹⁴⁸ We note that in New Jersey resellers are not obligated to file tariffs of their services.

¹⁴⁹ See VNJ-1 at 54 (losses are understated for "Enterprise" business customers in the larger line sizes because VNJ data tracked only business customers with revenues of less than \$5,000 per month.

¹⁵⁰ We note that, in any event, VNJ's line loss data purports to show that "the majority of BTNs tracked ... have three or fewer lines. VNJrb at 75; VNJb at 103; VNJ-3 at 22.

In addition, the Board is not persuaded by the Advocate's references to proceedings in other states in which line loss data was allegedly criticized. The Illinois matter cited is actually a Hearing Examiner's Proposed Order that was never adopted by the state Commission. Moreover, the Hearing Examiner agreed "that [line loss] data is relevant in principle to the functional equivalence of ostensibly competitive services."¹⁵¹ We note that, although the Illinois Hearing Examiner expressed concern that the line loss data submitted was not disaggregated by service, wire center, and time period, those concerns are not relevant here because VNJ has provided such data.¹⁵² Similarly, we are not persuaded by the criticisms of Qwest's application for pricing flexibility in the decision of the Washington Utilities and Transportation Commission (WUTC) cited by the Advocate.¹⁵³ As pointed out by VNJ, Qwest was criticized in that case because it estimated a competitor's market share based on the CLEC's share of access lines instead of customers. Ibid. We note that the WUTC acknowledged that line loss data was "one indicator of the presence of competition," that is, the WUTC did not state that the use of line loss data was inappropriate. Ibid. We also note that in that Washington proceeding, WUTC staff used line loss data, in part, in its own brief to recommend a finding of effective competition.¹⁵⁴ The state commission in that case accepted the view that BTNs represent an approximation of the number of customers, and relied on both line loss data and "customer (BTN) loss data" in support of its findings.¹⁵⁵

Finally, we agree with VNJ, that the definition of "local services" provided to respondents in VNJ's customer survey encompasses all services that provide a connection to the local telephone network and enable the customer to make local calls, including optional features that subscribers can choose, and that this definition covers all categories of service that are at issue in this case. Further, we FIND that to the extent that the definition could cause respondents to omit certain options that are at issue, the survey results would tend to understate customers' awareness of like or substitute services. In summary, having thoroughly reviewed the submissions of the parties, the Board finds persuasive VNJ's evidence regarding: lines lost to competitors providing each type of switched voice access; availability of switched data services

¹⁵¹ Investigation into Specific Competitive Tariffs to Determine Proper Classification of the Tariffs and to Determine Whether Refunds are Appropriate, Docket No. 98-0860 (March 30, 2001), Hearing Examiner's Proposed Order, §III.E.5.a.(4).

¹⁵² See VNJrb at 76, referencing VNJ-1 at 53-54, 73, and VNJ-3 at 4, 22-24.

¹⁵³ Petition of Qwest Corporation for Competitive Classification of Business Service in Specified Wire Centers, Docket No. UT-000883 December 2000), Seventh Supplemental Order (Washington Order) at ¶ 68.

¹⁵⁴ See Washington Order at 9, ¶¶ 27-28.

¹⁵⁵ Id. at 21, ¶ 73.

and/or substitutes via resale, DSL providers, and other competitors; the availability of switched ancillary services from competitors providing local switched services; the availability of private line services from competitors that can provide dial tone lines. Accordingly, the Board FINDS that like or substitute services are available for VNJ's multi-line business services throughout the Company's service area.

4. Ease of Entry

Based upon our review of the record and the arguments of the parties, and mindful of the records developed and the conclusions we have reached in the Board's recent UNE, Section 271 and related proceedings,¹⁵⁶ the Board FINDS that entry into the market for local business services has been substantiated in terms of the number of firms, the type of competition (e.g., resale, UNEs, and facilities-based competition), its widespread nature throughout the state, and the number of business lines served by competing carriers. Accordingly, the Board FINDS that there are no barriers to entry that would preclude the reclassification of multi-line business services.

With regard to collocation arrangements, we FIND that the evidence in the record, including data provided by AT&T and WorldCom regarding the location, capacity, and cost of their collocation arrangements¹⁵⁷, and data provided by VNJ demonstrating that collocation arrangements are present in wire centers accounting for a substantial portion of VNJ's business lines and revenues¹⁵⁸, establishes that a substantial number of collocation arrangements exist and the number of such arrangements is increasing; and that those arrangements are in use and can be used to provide virtually any service. The Board also notes that it has recently

¹⁵⁶ See Decision and Order, I/M/O the Board's review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., BPU Docket No. TO00060356 (March 6, 2002) (hereinafter, NJ UNE Remand Order); Consultative Report, I/M/O the Consultative Report of the Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey, BPU Docket No. TO01090541, cc Docket No. 01-347 (January 14, 2002) (hereinafter, Consultative Report); Comments, I/M/O the Consultative Report of the Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey, BPU Docket No. TE02030200, cc Docket No. 02-67 (April 4, 2002) (hereinafter, Consultative Report Comments); Orders, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services and I/M/O the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, BPU Docket Nos. TX95120631 and TX98010010 (Orders dated July 13, 2000, June 10, 2001, January 10, 2002, and March 28, 2002) (hereinafter, these Orders shall be referred to by their dates, as follows: Local Competition Order July 13, 2001, etc.); Order Approving Amended Settlement Agreement, I/M/O Filing by AT&T Communications of NJ, L.P., WorldCom, Sprint Communications Company, L.P., the United Telephone Company of New Jersey, and Verizon New Jersey Inc. for Approval of a Revision to Tariff B.P.U.-N.J.-No. 4, as Listed in the Appendix Providing for Revisions to CLEC Collocated Interconnection Service (April 19, 2002) (hereinafter, Collocation Order).

¹⁵⁷ See VNJ-32 (AT&T's response and supplemental responses to VNJ interrogatory VNJ-5, setting forth the technical details of AT&T's collocation arrangements); and VNJ-33 (WorldCom's responses to VNJ interrogatories VNJ-WorldCom-26, VNJ-WorldCom-28 and VNJ-WorldCom-46, listing WorldCom's collocation arrangements, and noting that WorldCom provides local business exchange services from its collocation arrangements (response to VNJ-WorldCom-46)).

¹⁵⁸ See VNJ-3 at 58.

approved a stipulation entered into by VNJ, AT&T, WorldCom, Sprint and United Telephone of New Jersey that reflected cooperation among the signatory parties in reaching an agreement providing for a substantially revised cross connect price structure (including a significantly lower recurring cross-connect charge), revised rates for all collocation rate elements (including planning, land and building, cage preparation, and power delivery and consumption for all types of collocation arrangements), and tariff language related to various areas of dispute (including central office tours, the exemption renewal process, inspection of CLEC facilities and removal of obsolete equipment). See Collocation Order at 2. In its Order, the Board acknowledged that the amended settlement agreement reflected “concessions made by the various parties in the spirit of compromise.” Id. at 3. The Agreement is a region-wide agreement approved in Delaware, Pennsylvania, the District of Columbia, Maryland, Virginia and West Virginia. Id. at 4.¹⁵⁹ It is therefore reasonable to infer that any CLEC requirement to use, as well as the availability of, collocation arrangements is not a barrier to entry.

We also reject as misplaced the arguments of the adverse parties that barriers to entry exist in the form of “unproven” UNE rates, insufficient access to VNJ OSS systems, and the type of systemic barriers alleged to exist by the NJCTA (e.g., insufficient dispute resolution processes, performance standards, and enforcement mechanisms).¹⁶⁰ With regard to UNE rates, the Board notes the recent conclusion of its UNE proceeding in which it reset all of VNJ’s UNE rates, terms and conditions pursuant to the Board’s continuing goal of stimulating local exchange competition, as well as pursuant to the remand from the United States District Court for the District of New Jersey of the Board’s first UNE decision.¹⁶¹ In its comprehensive Order, the Board set the recurring and non recurring costs of hundreds of UNE rates and rate elements, and established the terms and conditions under which certain advanced services, such as digital subscriber line (DSL) services should be made available by VNJ.¹⁶² The NJ UNE Remand Order substantially modified the Board’s prior December 2, 1997 UNE decision in Docket No. TX95120631, and, we believe, has effectively removed any concern that UNE prices, terms or conditions continue to constitute a barrier to local exchange entry in New Jersey.

¹⁵⁹ Despite their good faith efforts, the parties were unable to successfully resolve certain issues that, at the joint request of the parties, were deferred for further proceedings. Id. at 3.

¹⁶⁰ See, e.g., RPAb at 123 AT&Trb at 26-28; and CTAb at 17-25.

¹⁶¹ See AT&T Communications of New Jersey, Inc., et al. v. Bell Atlantic-New Jersey, Inc. et al., Civ. Nos. 97-5762 (KSH) and 98-0109 (KSH) (DNJ June 6, 2000).

¹⁶² For a summary of the Board’s decision, see NJ UNE Remand Order at 264-279, ¶¶ 1-82.

With regard to access to VNJ's OSS systems, the Board notes its adoption of explicit, comprehensive Carrier-to-Carrier Guidelines and their subsequent strengthening.¹⁶³ The Carrier-to-Carrier Guidelines are a set of service quality measurements and standards governing the provision of wholesale services, including OSS, by VNJ to competing carriers. Moreover, VNJ's OSS systems were tested extensively by the Board's independent consultant, KPMG Consulting, over an 18 month period, after which KPMG submitted a Final Report to the Board confirming the adequacy of VNJ's OSS systems.¹⁶⁴

The Board also notes its approval and adoption of an Incentive Plan comprised of self-executing performance measurement remedies, the goal of which is to provide incentives to VNJ to provide, on a continuing basis, high quality wholesale services to its competitors and to prevent any deterioration of VNJ's wholesale services subsequent to FCC approval of VNJ's application to provide long distance service in New Jersey pursuant to 47 U.S.C. § 271.¹⁶⁵ In the Board's Consultative Report to the FCC recommending VNJ's Section 271 approval, we noted the FCC's statement that "the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC [i.e., "Bell Operating Company"] will continue to meet its section 271 obligations after a grant of such authority."¹⁶⁶ The Board, in turn, relied on its adoption of the Incentive Plan as, in turn, an assurance that VNJ would continue to provide its competitors in the local exchange market high quality access to its OSS systems following FCC approval to enter the long distance market.¹⁶⁷ In the Consultative Report, the Board concluded that it "has removed any real or perceived barriers to entry to this [local exchange] market through its various decisions and orders."¹⁶⁸ Similarly, we conclude herein that our adoption of comprehensive Carrier-to-Carrier Guidelines, along with an Incentive Plan designed to encourage VNJ to meet the performance standards in the Guidelines fully removes the OSS barrier to entry.

Finally, with regard to assertions that the Board has no formal means of resolving carrier disputes (see RPAb at 132-133; CTAb at 20-22), the Board reminds the parties that a dispute

¹⁶³ See Local Competition Order (July 13, 2000) approving Carrier-to-Carrier Guidelines), and Local Competition Order (March 28, 2002) (approving Revisions to the Guidelines).

¹⁶⁴ See Consultative Report at 24-43.

¹⁶⁵ See Local Competition Order (January 10, 2002) and Local Competition Order (March 28, 2002).

¹⁶⁶ See Consultative Report at 81 (citation omitted).

¹⁶⁷ Id. at 83.

¹⁶⁸ Id. at 86.

resolution process was a hotly contested issue in our first local competition proceeding. In that proceeding, the Board recognized that “a procedure is necessary to resolve disputes between parties as expeditiously as possible.”¹⁶⁹ In the Board’s Order, the Board adopted, with only one exception, the dispute resolution proposal of the Advocate that provided for 30 days of negotiations between adverse parties, followed by a 60 day period of mediation by Board Staff, and then a petition to the Board with a Board resolution within 60 days. The modification to the Advocate’s proposal adopted by the Board removed the requirement that the Board resolve disputes within 60 days. Following motions for reconsideration of the Board’s dispute resolution decision by MCI Telecommunications Corporation (MCI) and Teleport Communications Group, Inc. (TCG), the Board modified its decision “to satisfy the concerns which a number of parties to the Local Competition proceeding expressed regarding the timeliness of Board action regarding service-affecting disputes ... but also [to] recognize that negotiating parties are in the best position to resolve disputes between themselves and should be encouraged to do so.”¹⁷⁰ The Board’s modified dispute resolution process shortened the timeframe for a Board decision from approximately 150 days to approximately 90 days.¹⁷¹ The Board limited the use of the process to petitions alleging action or inaction by a carrier that affects the petitioner’s ability to provide service or which is anticompetitive. The dispute resolution process was formally set forth in a nine (9) page appendix to the Order that included a sample timeline.¹⁷² In light of this concerted effort by the Board creating formalized Dispute Resolution Guidelines, we reject assertions that the absence of a dispute resolution process amounts to a barrier to entry.

Accordingly, having thoroughly reviewed the record with regard to this issue, the Board FINDS that sufficient evidence of ease of market entry exists to satisfy this standard as it relates to VNJ’s petition to reclassify multi-line business services.

¹⁶⁹ Decision and Order, I/M/O Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631 (December 2, 1997) (hereinafter, NJ Local Competition Order) at 128.

¹⁷⁰ See Order on Reconsideration, I/M/O Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631 (June 19, 1998) (hereinafter, Dispute Resolution Order) at 4.

¹⁷¹ Id. at 4-5.

¹⁷² See Dispute Resolution Order, Appendix A: Dispute Resolution Guidelines, at 11-19.

5. Customers With One to Four Lines

As we have noted earlier, several parties to this proceeding have questioned the appropriateness of VNJ's definition of the term "multi-line." That is, they have questioned whether it is appropriate to reclassify the business services of customers with as few as two business lines. For example, the Advocate charged that reclassification of multi-line businesses, as defined by VNJ to mean all business entities with more than one line, "will effectively result in the reclassification of all business services." RPAb at 106. The Advocate reasoned that, after successfully having multi-line business services reclassified, VNJ would be able to offer single line businesses a free line, which, if accepted, would transform the single-line customer into a deregulated multi-line customer. *Id.* at 106-107. AT&T warned that VNJ's reclassification request included, almost certainly, every small mom-and-pop store in most rural towns or neighborhoods of the State." AT&T argued that, once reclassified, "VNJ could double basic service rates and/or refuse to provide *a la carte* local business service in order to force those customers to buy service from VNJ that they do not want or need." AT&Tb at 5-6.

NJCTA charged that VNJ had not justified why its reclassification proposal included all but single-line business service. CTA_b at 14. NJCTA asserted that, as of year end 2000, only 81,951 VNJ business lines out of a total of 2,615,000 business access lines, or approximately 3.1%, would remain subject to regulatory protection were VNJ's proposal be approved.¹⁷³ NJCTA contended that, with one voice line and one fax or internet access line, even the smallest business customers may well be multi-line customers. *Id.* at 15. NJCTA argued that there is nothing in the record to indicate that regulatory agencies in any jurisdiction have used the one-line cutoff to differentiate the manner in which local exchange business services are regulated, or that such a "demarcation point reflects any relevant technical or regulatory consideration." *Id.* at 15-16. NJCTA pointed out that the FCC defined small business customers, for reporting purposes related to its continuous monitoring of the development of local competition, as those businesses with fewer than four (4) lines.¹⁷⁴

We note that VNJ has presented evidence that competitors have captured many VNJ business customers who were purchasing from one to 5 business lines. *See* VNJb at 94. Referring to

¹⁷³ *Id.* at 14-15, citing Verizon Corporation SEC Form 10K for fiscal year ending December 31, 2000 and AT&T-7.

¹⁷⁴ *Id.* at 16, citing CTA-1 at 13, the Local Competition Reporting Order at ¶ 77, and the UNE Remand Order at ¶¶ 290-296.

VNJ-33 (WorldCom Response to Staff interrogatory SR-1), VNJ noted that “15% of WorldCom’s local business customers in New Jersey are single-line customers.” Ibid.

However, the Board shares some of the concerns of the parties opposing VNJ’s concept of small business customers as those with only one line. The Board believes that reclassification of all business services provided to customers with more than one line, as requested by VNJ, is neither necessary nor appropriate at this time. We note in particular NJCTA’s argument that no evidence has been presented that any regulatory agency in any jurisdiction has used a “one-line cutoff” to distinguish the manner in which local business services would be regulated. We also note that the FCC, in establishing reporting requirements for the purpose of monitoring the development of local competition, and in establishing unbundling obligations, has distinguished customers with three lines or less as the “mass market,” where “competition is nascent”, and those with four lines or more as “the medium and large business market,” where “competition is beginning to broaden.”¹⁷⁵ We note, as did AT&T, that VNJ currently has some flexibility in marketing its services to business customers because of its ability to bundle services, offer discounted services and introduce new services. AT&Trb at 9. AT&T points to cross-examination testimony of VNJ witnesses indicating that VNJ had not documented the loss of a single business customer due to existing state regulatory policies. Ibid., citing 5T1165-1167. And the Board is keenly aware that were we to accept the Company’s reclassification request in full as proposed, almost all (i.e., 97%) of its business customers, including many so-called “mom-and-pop” businesses, would no longer receive rate and tariff protection. The Board is not persuaded by the Advocate’s concerns that following reclassification, VNJ will be able to unilaterally convert single line business customers into (unregulated) multi-line customers. As VNJ pointed out, and as the Board here FINDS, VNJ will not be able to “force” any customer to become a multi-line customer, as customers will be free to keep their existing single-line service or return to that service if VNJ ever sought to raise rates. The Board is persuaded that the existence of regulated, single-line business service is a significant factor which inhibits VNJ from attempting to disadvantage any customers.

In addition, the Board finds that the Advocate’s comparison of VNJ’s rates of return for rate regulated and reclassified services improperly compares static levels of return, rather than examining changes in prices and rates of return before and after reclassification. The Board

¹⁷⁵ UNE Remand Order at ¶ 294

agrees with VNJ that the Advocate's analysis ignores other factors, such as increased efficiency and innovation, that could impact rates of return while presenting no harm to customers.

The Board also rejects the Advocate's related claim that VNJ should be required to present a "cost of service" analysis on the services proposed for reclassification. As required by the Board in its December 22, 2000 Order that presented guidelines for the filing of the petition in this proceeding, VNJ provided an analysis showing that its rate-regulated business services, as a group, are not subsidized by the VNJ's remaining rate-regulated services. As we have already noted, the Board believes that the three requirements for reclassification are sufficient and appropriate, and we will not adopt any requirement that compels a cost of service analysis of services proposed for reclassification as a condition for that reclassification.

Accordingly, in light of our concerns and in view of the federal precedent for distinguishing between medium and large businesses and "mass market" customers, for customers with two, three or four lines, the Board HEREBY DEFERS any decision to re-classify such lines at this time. Pursuant to the Board's authority under N.J.S.A. 48:2-21.19b and -21.19d., the Board DIRECTS the Staff to oversee a customer survey process in which information is compiled regarding the availability of customer choice for all classes of business customers with special emphasis on the level of competition for business customers with less than five lines. However, in light of the evidence noted above regarding the existence of competition for business customers at all line sizes, and pursuant to the Board's statutory authority pursuant to N.J.S.A. 48:2-21.18a to approve with modification a plan of alternative regulation (defined as a form of regulation other than traditional rate base, rate of return regulation that may include a "zone of rate freedom"), the Board DIRECTS that VNJ shall hereby be authorized to adjust rates by 10% per year for all services, except the basic line rate, provided to customers with two, three or four lines. These services will remain classified as rate regulated services, and may be declared competitive upon completion of the customer survey. This zone of rate freedom will enable customers to receive the benefit of allowing VNJ to compete more effectively for their business. The Board DIRECTS VNJ to submit revised tariffs reflecting the fact that it is authorized to adjust rates to business customers with two, three, or four lines within a range of 10% per year of current rates.

VI. AT&T'S CROSS-PETITION FOR STRUCTURAL SEPARATION

A. Procedural History

On February 27, 2001, AT&T filed a Cross-Petition requesting that the Board issue an Order mandating the structural separation of VNJ's wholesale and retail functions. On March 19, 2001, VNJ moved to dismiss the AT&T Cross-Petition. On May 15, 2001, the Advocate and AT&T filed testimony, including testimony addressing structural separation. On June 15, 2001, VNJ filed rebuttal panel testimony on structural separation. As noted above, on June 20, 2001 the Board issued an Order indicating that the issue of structural separation was an appropriate issue to be addressed by the parties in this proceeding.

On June 22, 2001, the Advocate filed a request for schedule modification, stating that it required additional time to file testimony on structural separation. On June 29, 2001, AT&T responded to the Advocate's request and among other things requested an opportunity to file additional testimony addressing structural separation. Commissioner Butler granted the Advocate's request, but denied AT&T's request for additional testimony finding that AT&T already had ample opportunity to file testimony on structural separation issues. Pursuant to Commissioner Butler's ruling, the Advocate filed additional direct testimony on structural separation on August 3, 2001.

B. AT&T Position

AT&T argued that PAR-2 would fail to satisfy the statutory criteria of N.J.S.A. 48:2-21.18 unless it includes a structural separation requirement for VNJ's wholesale and retail operations. According to AT&T, without separating VNJ into two corporations, the Board cannot be assured that PAR-2 will produce just and reasonable rates, will be in the public interest, will reduce regulatory delay, and will not prejudice or disadvantage classes of customers or competitors. AT&Tb at 39. AT&T further contended that the Board should only adopt a new plan that is consistent with the goal of promoting local competition, and that PAR-2, as proposed by VNJ, constrains and blocks the development of local competition. Ibid. In AT&T's view, a structural separation requirement will correct PAR-2's infirmity with respect to local competition by providing nondiscriminatory access to OSS and UNEs at cost-based rates. Id. at 41-42.

AT&T specifically defined its proposal for structural separation as the requirement that VNJ establish: (1) a retail affiliate which would provide finished local and long distance services to consumers and maintain the customer relationship; and (2) a separate wholesale affiliate which would continue to own and operate the network facilities necessary to provide local telephone services in New Jersey. Id. at 44. Under AT&T's proposal, VNJ's wholesale affiliate would be required to make its network and related operational support available equally to its retail affiliate and all CLECs via tariff with prices established by the Board. AT&T envisioned the role of VNJ's retail affiliate as offering, to any end user, all of the services of a CLEC. Thus, according to AT&T's proposal, in order to provide finished retail services, the retail affiliate would have to negotiate an interconnection agreement with the wholesale affiliate in the same manner as any other CLEC. AT&T further recommended restraints on affiliate transactions, the maintenance of separate books, records, and accounts for both affiliates, separate officers, directors and personnel, the maintenance of separate facilities, and the requirement that the affiliates deal at arms length, and in writing. Id. at 44-46.

AT&T asserted that implementation of structural separation would not prove unreasonably costly. While not providing a cost analysis, AT&T cited the Board's Generic Proceeding¹⁷⁶ regarding local exchange competition, where VNJ introduced retail avoided cost testimony for the purpose of establishing a resale discount level. According to AT&T, the VNJ retail avoided cost information could be used to conclude that the entire cost for severing one of the largest companies in this State into two totally separate companies would be \$18.3 million.¹⁷⁷

AT&T argued that the Board is authorized to impose structural separation in connection with VNJ's petition for approval of PAR-2, noting the Board's authority, under N.J.S.A. 48:2-21.18a, to make "modifications" to a plan of alternate regulation to ensure that it meets the statutory criteria. Id. at 48. Specifically, AT&T argued that structural separation is an "essential prerequisite" to any finding that a plan of alternative regulation will not unduly or unreasonably prejudice or disadvantage customers or competitors, and that structural separation is also relevant to the satisfaction of other criteria, including the production of just and reasonable rates, the public interest, reduction of regulatory delay and costs, and enhancement of economic development. Id. at 48-49, referring to N.J.S.A. 48:2-21.18a(2), (4), (5), and (6). AT&T further cited the Board's June 20, 2001 Order of Approval which stated that "it is clear that

¹⁷⁶ I/M/O The Investigation Regarding Local Exchange Competition For Telecommunications Services, Docket No. TX95120631.

¹⁷⁷ Id. at 46-47, referring to AT&T-42 at 196, AT&T-43 and AT&T-40 at 30-31.

the issue of structural separation is a relevant issue to be considered by the Board in this proceeding...” Id. at 48, citing Order of Approval at 12. AT&T also cited the PAR-1 Order, noting that there the Board reserved its right to consider imposing structural safeguards. Id. at 48-49, referring to PAR-1 Order at 112. Moreover, according to AT&T, the federal 1996 Act “expressly contemplates that state utility commissions will take independent action under state authority consistent with the pro-competitive policies of the Act.” Id. at 49, citing 47 U.S.C. § 253. In addition, AT&T asserted that structural separation is available under New Jersey law regardless of the presence of a plan of alternate regulation or specific statutory authority for the Board to impose. Id. at 49-50.

C. VNJ Position

VNJ vigorously opposed AT&T’s structural separation proposal alleging, among other things that (1) the Board lacks the legal authority to impose structural separation; (2) requiring VNJ to be separated into two separate businesses is a drastic measure which is unnecessary to promote local competition, (3) the forced structural separation of telephone companies is extraordinarily costly, time-consuming and wasteful; (4) structural separation would violate the Federal Telecommunications Act of 1996, which specifically establishes a regime of non-structural safeguards; (5) structural separation would be both harmful to consumers and would result in higher costs to customers, and (6) in light of the foregoing considerations, structural separation would be bad public policy. VNJB at 153-54.

VNJ argued that structural separation proposals have been consistently rejected by Congress, the FCC, other states, and this Board. According to VNJ, AT&T failed to show that any regulatory body, even in foreign countries, has opted to break up the wholesale and retail telecommunications functions of an operating local exchange company. Id. at 154-55. VNJ contended that, with respect to the federal 1996 Act, Congress carefully weighed, and rejected, structural separation in favor of a wide range of non-structural competition-enhancing requirements such as interconnection, unbundling, and resale. Id. at 155-156. Additionally, the Company asserted that no state legislature or regulatory agency has found that structural separation is necessary to promote local competition, specifically citing the decisions of the Florida Public Service Commission, the Virginia State Corporation Commission, the Illinois Commerce Commission, and the Pennsylvania Public Utility Commission rejecting similar structural separation proposals. Id. at 156-58. VNJ further claimed that the arguments of

AT&T, WorldCom and the Advocate in support of structural separation assume that the 1996 Act has failed and that the Board's market-opening efforts have been in vain. Id. at 158. According to the VNJ, the State has vibrant competition for business services and growing competition for residential services. VNJ further argued that the hundreds of interconnection and resale agreements reached under the 1996 Act, between VNJ and CLECs, and the resulting competition, contradict any notion that structural separation is a precondition to competition. VNJb at 158-59.

VNJ also challenged the legal authority of the Board to structurally separate its business into separate wholesale and retail units. Id. at 159-61. According to VNJ, "absent an express grant of authority [from the Legislature] to force the restructuring of a regulated entity, such decisions are within the province of the company, not the regulatory agency." Id. at 160. VNJ argued that the Board could not infer, from either its general powers under N.J.S.A. 48:2-13 or the 1992 Act, the authority to order structural separation. Ibid. VNJ cited the Electric Discount and Energy Competition Act, L.1999, c.23 (N.J.S.A. 48:3-49 et seq.) (EDECA) as an instance where the Legislature expressly granted the Board the authority to order structural separation of energy utilities, and provided detailed guidelines regarding that authority.¹⁷⁸ According to VNJ, "[i]f the Legislature had intended the Board to have the authority to structurally separate telecommunications companies subject to its jurisdiction, it would have granted such authority in the Act, as it did in EDECA." Ibid. VNJ argued that a determination that the Board has the implicit authority to structurally separate VNJ would render the express provisions of EDECA superfluous, and would be "contrary to well-settled rules of statutory construction."¹⁷⁹

The Company also alleged that the imposition of structural separation would violate the 1996 Act. VNJ contended, as an example, that structural separation would violate Section 261 of the Federal Act, which prohibits State regulations or requirements that are inconsistent with the local competition provisions of the Federal Act, arguing that a structural separation requirement would be inconsistent with the expectation of Congress that incumbent carriers would remain in both wholesale and retail lines of business. Id. at 161-62. In support of this proposition, VNJ specifically cited Section 251(c)(4)(A) of the 1996 Act, which provides that all incumbent LECs have the duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Id. at 162.

¹⁷⁸ Id. at 160, referring to N.J.S.A. 48:3-56(f), N.J.S.A. 48:3-58 and N.J.S.A. 48:3-59.

¹⁷⁹ Id. at 160-61, citing Abbotts Dairies v. Armstrong, 14 N.J. 319, 327-328 (1954).

VNJ argued further that “the limited separation requirements contained in Sections 272 and 274 of the Act confirm that Congress knew precisely how to impose a separation requirement when it believed one to be necessary.” Id. at 162. In addition, VNJ argued that a structural separation requirement would prohibit the post-separation VNJ wholesale company from providing a telecommunications service, and therefore would violate Section 253(a), which is intended to prevent a state, through law or regulation, from creating just such a prohibition. Id. at 163.

VNJ characterized structural separation as “costly, inefficient, and completely unnecessary to promote competition”, further charging that the citizens of the State would ultimately pay the price for the its unnecessary implementation. Id. at 164. Should the Board order structural separation along the lines called for by AT&T, VNJ estimated that, at a minimum, it would incur the following costs:

- ?? Development and expansion of fully separate negotiation and customer care systems for use by [VNJ] retail arms and [VNJ] wholesale arms in taking customer orders and providing other services for their respective customers;
- ?? Development of new specialized systems for [VNJ] retail arms to translate retail product offering[s] into the UNEs and wholesale services it must acquire in order to provide those offerings;
- ?? Development of new specialized systems to allow [VNJ] retail arms to order, track and monitor order completion, and bill services from multiple vendors to fulfill retail customer orders; and
- ?? Development of new systems to allow [VNJ] wholesale arms to provide services to resellers on behalf of VNJ retail arms.

[Id.] at 165].

The Company also noted the additional probable costs of establishing a new corporate identity for the retail affiliate, changing methods and procedures, duplicating metric systems, moving to, and in some cases constructing, new offices, resolving issues relating to asset inventories, transferring and relocating employees, establishing regulatory procedures and tariff filings for the new entities, hiring and retraining employees, and dealing with increased employee turnover and labor unrest. Ibid. Beyond these immediate costs, VNJ argued, structural separation would deprive it of the economies of scale and scope required to provide telecommunications services efficiently, thereby conferring upon AT&T and other competitors a cost advantage. Id. at 165-

66. Ultimately, according to VNJ, all of these costs would be borne by its New Jersey customers. Id. at 166.

Lastly, VNJ urged the Board to reject the proposals of the Advocate and WorldCom which would have the Board impose “codes of conduct” on VNJ. Id. at 166-67. According to VNJ, although codes of conduct stop short of structural separation, they would still force the Company to operate its retail and wholesale businesses as though they were two separate entities. Ibid. In the opinion of VNJ, these proposals do not advance the interests of customers, but rather advance the interests of VNJ’s competitors. Id. at 167. VNJ asserted further that these proposals, if not applied to all carriers in the state, would be in violation of Section 253(b) of the 1996 Act since, according to VNJ, they would discriminate against VNJ while leaving competitors free to operate without similar restrictions. Ibid. VNJ also claimed that the “costs and burdens of these code of conduct proposals would impair [its] ability to compete against AT&T, WorldCom and other carriers.” Ibid.

D. Advocate Position

The Advocate recommended that the Board order a full structural separation of Verizon-NJ’s wholesale and retail operations, like that proposed by AT&T, or, in the alternative, order a “functional/structural” separation through the implementation of a code of conduct with strict accounting requirements and penalties. RPA at 10, 135-147. The Advocate argued that the record demonstrates that past regulatory efforts have failed to achieve sufficient competition in New Jersey, and that Verizon-NJ, as the dominant LEC in the state, has both the incentive and the ability to further inhibit competition by favoring its own retail unit. Id. at 10, 135-138. According to the Advocate, structural separation, or a code of conduct, backed up by strict accounting and penalties, is the only way to eliminate these incentives and abilities, and is supported by precedent in New Jersey and elsewhere. Id. at 10, 135-36.

The Advocate contended that structural separation, or, in the alternative, a code of conduct, is appropriate because past regulatory efforts have not brought widespread, meaningful competition to New Jersey. Id. at 137. The Advocate further argued that “the time has come to move beyond regulatory efforts to promote competition solely by ordering Verizon-NJ to conduct its wholesale business on a non-discriminatory, pro-competitive basis.” Ibid. The Advocate alleged that while many CLECs have attempted to enter the local market in New Jersey, VNJ

retains a dominant share of those markets. Ibid. According to the Advocate, structural separation, or a code of conduct, will promote competition by diminishing the incentives for VNJ to use its dominant position in the wholesale market to favor its retail arm. Ibid. The Advocate touted the Bell System divestiture as a “tangible example of the efficacy of structural separation for promoting competition in markets with a dominant provider of wholesale services. Id. at 138-139. According to the Advocate, structural separation would “mitigate” VNJ’s unearned competitive advantages that are the result of the integration of its monopoly wholesale operation with its retail offerings. Id. at 139-140.

According to the Advocate, there is ample authority, both in New Jersey and elsewhere, to support the Board’s imposition of either structural separation or a code of conduct. Id. at 140-143. Specifically, the Advocate relied on EDECA as confirmation of the Legislature’s recognition of the Board’s power to mandate that a utility provide competitive services through a business unit that is structurally or functionally separate from the unit providing monopoly services. Id. at 140. In addition, the Advocate cited the Board’s Affiliate Relations Standards, asserting that the standards evidence our recognition of “the benefits of functional/structural separation” with respect to electric and gas utilities. RPAb at 140-41, referring to N.J.A.C. 14:4-5.1 et seq. According to the Advocate, these standards provide a “highly useful model” for the Board to follow as the Board facilitates local competition in telecommunications. Id. at 141. The Advocate pointed to the Board’s adoption of a code of conduct for the utility that emerged from the acquisition of Jersey Central Power and Light Company by FirstEnergy Corporation as establishing the merit of a strong code of conduct.¹⁸⁰ Referring to the Pennsylvania Public Utilities Commission’s (PA-PUC) consideration of structural separation with respect to the Verizon’s operating company in that state, the Advocate asserted that although PA-PUC did not order actual structural it endorsed the use of a code of conduct to promote competition. Id. at 142. According to the Advocate, the Pennsylvania code of conduct is consistent with the approach that the Advocate supports here, and “includes separate books of account for Verizon-PA’s wholesale and retail businesses and rules requiring non-discriminatory treatment of retail competitors.”¹⁸¹

¹⁸⁰ See Order of Approval, Joint Petition of FirstEnergy Corp. and Jersey Central Power and Light Company, d/b/a GPU Energy, for Approval of a Change in Ownership and Acquisition of Control of a New Jersey Public Utility and Other Relief, Docket No. EM00110870 (October 9, 2001) (hereinafter, FirstEnergy Order).

¹⁸¹ Ibid., citing Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, PA-PUC Docket No. M-00001353 (April 11, 2001).

While reiterating its full support for structural separation, in the event that the Board does not select that alternative, the Advocate proposed a code of conduct¹⁸² addressing both VNJ's organization and the nature of transactions between the Company's wholesale and retail segments. Id. at 143-147. The Advocate recommended that a code of conduct should, among other things, prohibit VNJ's competitive business units from using the corporate name in any way in their marketing; encourage competition for retail services by requiring the Company to adopt a program to educate consumers about competitive choices; limit the transfers of personnel between the wholesale and resale sides of VNJ; forbid the sharing of facilities or employees between the wholesale and retail sides of VNJ's business; and compel VNJ to maintain separate books of account for its wholesale and retail units. Id. at 144-145. The Advocate also recommended that customers be given "an express opportunity to select among competitive providers of retail services" in order to help erode VNJ's "artificial advantage" allegedly enjoyed by virtue of its long tenure as a monopoly provider of retail telecommunications services. Id. at 145. Finally, the Advocate urged the Board to adopt several requirements for VNJ's dealings with its own retail operation and with its competitors, including, inter alia, a prohibition against any form of discrimination; a right of access by competitors to include marketing information in VNJ's retail bills; equal access by competitors to customer information; a prohibition against joint marketing by VNJ's wholesale and retail units; and non-discriminatory and expeditious access to objective information by consumers and competitors. Id. at 145-146.

E. Discussion

Having carefully reviewed the arguments of the parties regarding the imposition of structural separation, or in the alternative, a code of conduct upon the Company, the Board is convinced that the imposition of either of these requirements is not in the best interests of either telecommunications customers or the Company, and is not necessary in order to protect VNJ's competitors from undue or unreasonable prejudice or disadvantage. Accordingly, the Board REJECTS both the Cross-Petition of AT&T for structural separation of VNJ and the similar urgings of the Advocate and others that we impose a code of conduct on VNJ.

¹⁸² We note that WorldCom argued briefly in favor of the adoption and implementation of a code of conduct. See WCb at 8.

The Board notes at the outset that we reject these motions for public policy reasons. Therefore, because it is unnecessary, we refrain from any consideration of the arguments of the parties regarding the Board's authority in the first instance to grant such relief.¹⁸³ We note that structural separation was in fact proposed in the initial PAR-1 proceeding by the New Jersey Cable Television Association and was supported by the New Jersey Press Association. After considering arguments not wholly dissimilar to those presented in this proceeding, structural separation, was rejected by the Board. See PAR-1 Order at 99-115. The Board found that "the non-structural safeguards incorporated in the plan, as modified herein, are appropriate safeguards, and a requirement for fully separate subsidiaries is not necessary at this time." Id. at 112. As noted by VNJ, structural separation has been considered and rejected by a number other state regulatory bodies and has not been found necessary to protect competition by any state.¹⁸⁴ In addition, this approach has been rejected by Congress in drafting the 1996 Act, and by the FCC in numerous regulatory orders.¹⁸⁵

The Board is persuaded, based on the totality of evidence in the record, that structural separation would in all likelihood impose substantial costs and inefficiencies on VNJ that would ultimately be borne by customers through increased rates. The Board is in accord with the FCC's conclusion that structural separation could cause severe disruptions, harm service quality, and create delays in the development of new technologies. Finally, the Board has already recognized in our Consultative Report filed with the FCC in VNJ's Section 271 proceeding, that VNJ has taken the necessary steps under the 1996 Act to open its local exchange and exchange access markets in New Jersey to competition, and that New Jersey local telephone markets have been "irreversibly open to competition," all occurring without the need for structural safeguards.¹⁸⁶

We also believe that the codes of conduct governing VNJ's relationships with its affiliates proposed by the Advocate and WorldCom are unnecessary at this time. Imposing such requirements on VNJ, without imposing the same requirements on other fully integrated carriers

¹⁸³ In rejecting structural safeguards in VNJ's PAR-1, the Board stated in part, that "a requirement for the establishment of completely divested subsidiaries ... presents serious questions as to preemption by the FCC of the Board's jurisdiction to order structural safeguards for at least certain services." PAR-1 Order at 112.

¹⁸⁴ See VNJ-30 at 13-14 (Illinois, Maryland, Pennsylvania); VNJb at 153-158 (Florida, Virginia).

¹⁸⁵ See VNJ-30 at 6 (statement by former FCC chairman that Congress had the opportunity but chose not to adopt a wholesale-retail distinction); Id. at 6-7 ("to the extent that structural approaches have been used [by the FCC], they have typically been reconsidered within a few years of enactment").

¹⁸⁶ See Consultative Report at 87.

operating in this State, would not advance the interests of consumers, and may unduly disadvantage VNJ.

In summary, the Board believes that the requirements imposed on the Company by the 1992 New Jersey Act, the federal 1996 Act, the Board's regulations, the stringent Board-ordered Carrier-to-Carrier Guidelines and wholesale and retail service quality standards, as well as the modifications to VNJ's PAR-2 that we order herein, are reasonable and sufficient non-structural safeguards that will adequately protect both the Company's competitors and customers from undue or unreasonable prejudice or disadvantage.

For these reasons, the Board shall impose neither structural separation nor the proposed codes of conduct. However, the Board continues to reserve the right to monitor the continued use and effectiveness of the non-structural safeguards currently applicable to VNJ and will consider, to the extent permitted by law, the imposition of additional safeguards if this subsequently becomes necessary.

DATED: 8/19/03

BOARD OF PUBLIC UTILITIES
BY:

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JEANNE M. FOX
PRESIDENT

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FREDERICK F. BUTLER
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Kristi Izzo

KRISTI IZZO
SECRETARY

PLAN FOR ALTERNATIVE FORM OF REGULATION-2

FOR VERIZON NEW JERSEY INC.

INTRODUCTION

This Plan for an Alternative Form of Regulation-2 ("PAR-2") replaces Verizon New Jersey's ("Verizon NJ's") existing plan and governs those services that remain Rate Regulated¹⁸⁷ under the Telecommunications Act of 1992, N.J.S.A. 48:2-21.16 et seq.

I. TERM AND EFFECT

- A.** The PAR-2 will commence on the date the Board approves it. At any time thereafter, Verizon NJ may file for approval of a new plan, or petition the Board to modify any of the provisions of PAR-2 to reflect changed conditions.
- B.** The provisions of the PAR-2 supersede all provisions of the Plan for an Alternative Form of Regulation contained in the Board's initial Decision and Order, Docket No. TO92030358, dated May 6, 1993.

II. COMMITMENTS TO INFRASTRUCTURE DEPLOYMENT AND LIFELINE SERVICE

- A. Infrastructure Deployment** - Verizon NJ will achieve the Opportunity New Jersey ("ONJ") service capability targets and fulfill the requirements of the Access New Jersey ("ANJ") program with the following enhancements to expand and extend the program:

- 1. The existing commitment to ANJ will be expanded by an additional \$20 million as follows: (a) \$14 million will be added to the CPE fund, and the list of eligible equipment will be expanded to include CODECs for ATM Service; and (b) \$6 million will be added to support the video portal for the development of interactive video content, equipment upgrades for video over Internet Protocol, maintenance and staffing.
- 2. Discounted ANJ rates will be extended until the end of 2004. Contracts signed in 2004 will continue those ANJ rates for a minimum of three additional years, i.e., through 2007.

- B. Lifeline Service** - The Lifeline Program will be expanded for low-income citizens and senior citizens and include:

- 1. Self-certification where the customer of record receives Lifeline service upon verbal notification of eligibility. The customer has 60 days to provide written certification that

¹⁸⁷ For purposes of the Plan, Rate Regulated services (described as "noncompetitive services" in the statute) shall mean all Verizon NJ services other than those (1) designated by the Board as Competitive or (2) not regulated by the Board. Under the Act, but prior to the Plan, Rate Regulated services included all tariffed services designated as Group II under the Rate Stability Plan implemented by the Board in Docket No. TO87050398. Jurisdiction over wholesale services is governed by the Federal Act subject to FCC and state commission oversight.

they are participating in one of the eligible programs or for low-income seniors 65 and over and documentation (e.g., a copy of most recent federal or state income tax return) showing that they meet low-income requirements. If the information is not provided in 60 days, the Lifeline discount will be removed and will not be restored until Verizon receives the verification information. Verizon reserves the right to verify all information provided.

2. Low-income senior customers (65 and over) at or below 150% of Poverty Level¹⁸⁸.
3. An expanded list of eligible programs to include participation in either Supplemental Security Income (SSI) or Medicaid programs.
4. An outreach program that includes direct mail or bill inserts, outreach information presentations, newspaper ads, radio ads, press releases and posting on Verizon's web site.
5. The Link-Up America program will include the same expanded eligibility requirements and self-certification procedure that applies to Lifeline.

Overall, the Lifeline Program provides \$94.20¹⁸⁹ of annual savings per low-income participant.

III. STREAMLINED PROCESS TO INTRODUCE NEW SERVICES AND CHANGE PRICES OF EXISTING SERVICES.

A. Introduce New Services - A streamlined process to introduce new services will enable customers to benefit immediately from the capabilities of an advanced telecommunications infrastructure and competition.

1. All new service offerings shall become effective five business days after filing with the Board, without the requirement for prior Board approval. Board approval is required to classify a new service offering as Competitive.
2. The filing shall include a brief description of the service and a copy of the tariff pages with all terms and conditions.
3. For new services proposed as Competitive offerings, the filing for a new Competitive service offering will include sufficient information to show compliance with N.J.S.A 48:2-21.19(b).
4. The Board shall retain its authority to investigate and suspend, if necessary, all aspects of the service if the filing violates a Board rule or is otherwise not in compliance with law.

B. Revenue Neutral Rate Restructures – Throughout the term of PAR-2, Verizon NJ may propose revenue neutral rate restructures for its Rate Regulated services. The Board must issue a decision on any proposal within 90 days of the filing, otherwise the proposal shall be deemed approved. Revenue neutrality in such filings will not be limited to within service categories, and will be supported by currently available and prospective data and include:

¹⁸⁸ As published in the Federal Register for the 48 contiguous states. For 2000, 100% of the Poverty Level was \$8,350 for a single person household.

¹⁸⁹ Comprised of monthly discounts of \$3.50 on the basic line and \$4.35 equal to the subscriber line charge multiplied by 12 months.

1. a description of the service(s) affected and an explanation as to why the restructure is proposed;
2. calculations demonstrating the revenue neutral effect of the proposed restructure; and
3. a description of the impact of the proposed restructure on all affected classes of customers, demonstrating that no other class is unduly advantaged over another.

IV. RECLASSIFICATION OF SERVICES AS COMPETITIVE

Verizon NJ may petition the Board to reclassify an existing Rate Regulated service as competitive, in which case it will support its petition with affidavits or other proofs evidencing the competitive nature of the service as required by the Telecommunications Act of 1992. Verizon NJ also will follow the safeguard and notice provisions set forth in Section V.

V. CONSUMER AND COMPETITIVE SAFEGUARDS

In order to provide assurances both to the Board and to Verizon NJ customers and competitors, Verizon NJ will observe a series of specific safeguards described in this Section. The safeguards shall apply to all Verizon NJ Competitive telecommunications services and those that Verizon NJ seeks to classify or reclassify as Competitive.

A. Imputation Of Rate Regulated Charges - Verizon NJ agrees that the rates that it charges for a competitive service shall exceed the rates charged to others for any noncompetitive (*i.e.*, Rate Regulated) service used by Verizon NJ to provide the competitive service.

B. Tariffs for Competitive Services - For services that the Board classifies as Competitive, Verizon NJ will file and maintain tariffs in conformance with the requirements of Docket No. TX92020201, unless the Board does not require tariffs for particular services. The rates for Competitive services may be either in the public filed tariffs or, if the Board determines that the rates are proprietary, on file with the Board. If rates for Competitive services are not in Verizon NJ's public tariffs, Verizon NJ will permit interested parties to review the unpublished rates under the terms of an appropriate protective agreement, such as those currently used in cases before the Board. Changes or additions to tariffs for Competitive services shall be made in accordance with the Competitive service rules adopted in Docket No. TX92020201, or in subsequent proceedings before the Board.

C. Unbundling - For Competitive services (and in connection with any filing to make a service Competitive), Verizon NJ shall identify each Rate Regulated¹⁹⁰ service, if any, which is incorporated in its Competitive services and shall make all such noncompetitive services separately available to any customer under tariff terms and conditions, including price, identical to those used by Verizon NJ in providing its Competitive service.

D. Cost Allocation Data - In order to demonstrate that Rate Regulated services will not subsidize Competitive services, Verizon NJ will provide annual reports to the Board's staff showing that, in the aggregate, the total revenues for Verizon NJ's Competitive services exceed the total direct costs of the services. In connection with any filing to make a service Competitive, Verizon NJ will file with the Board direct cost data. Proprietary information shall

¹⁹⁰ For purposes of Section V, Rate Regulated services shall mean all Verizon NJ services other than those (1) designated by the Board as Competitive or (2) not regulated by the Board.

be treated in accordance with the terms of an appropriate protective agreement, such as those currently used in cases before the Board.

E. Notice -

1. For new proposed Competitive telecommunications services, Verizon NJ will file notice with the Board no less than 14 days in advance of their introduction or as otherwise required by the Board as a result of its pending rulemaking in Docket No. TX92020201. Verizon NJ agrees that it will provide notice to interested parties of the new service at the time such a filing is made with the Board.
2. Verizon NJ agrees that, 30 days prior to proposing the reclassification of an existing Rate Regulated service as Competitive, it shall provide notice to interested parties that Verizon NJ intends to make such a filing with the Board.
3. Notice to the Board and interested parties shall include a brief description of the filing. A copy of the filing will be provided to interested parties upon request, except that proprietary information shall be treated in accordance with the terms of an appropriate protective agreement, such as those currently used in cases before the Board.

F. Standards for Determining and Monitoring Competitiveness of Services – The Plan incorporates the standards for determining and monitoring the competitiveness of services set forth in the Board's rulemaking proceeding in Docket No. TX92020201, subject to any additional regulations applicable to local exchange carrier Competitive telecommunications services.

In monitoring the competitiveness of services to determine whether a service previously found to be Competitive should be reclassified, the Board will consider whether:

1. the market concentration for an individual carrier results in a service no longer being sufficiently competitive;
2. significant barriers to market entry exist;
3. there is a lack of significant presence of competitors;
4. there is a lack of like or substitute services in the relevant geographic area;
5. a carrier is providing safe adequate and proper service.

As set forth in Section VI, Verizon NJ will provide the Board quarterly and annual reports for Competitive services.

VI. REPORTING REQUIREMENTS.

A. Service Quality - Until replaced by a new set of performance standards approved by the Board, Verizon NJ will continue to file the service quality reports it currently provides to demonstrate compliance with the service quality benchmarks established by the Board in Docket No. TO87050398.

Failure to comply with the applicable service quality benchmarks will result in the following:

- 1) for exception levels, a threshold violation shall require Verizon NJ to investigate the sub-standard performance, take appropriate corrective action and inform Board's Staff of the results;
- 2) for surveillance level threshold violations, in addition to the exception level requirements, a formal report must be filed with the Board, which may take action as it deems appropriate. The Board reserves the right to terminate the Plan, after notice and hearing, in the event that a substantial degradation of service is found to exist.

B. Infrastructure Deployment - Verizon NJ will file an annual report with the Board detailing its progress on ANJ and a biennial infrastructure deployment report detailing its progress on ONJ.

C. Monitoring of Competitive Services - Verizon NJ will comply with the reporting requirements contained in N.J.A.C. 14:10-5.9.

Retail Service Quality Standards For Verizon NJ

Retail SQ Standards	
Note: Performance shortfall defined as a missed standard for three consecutive months	New Company Level Standards
(1) customer trouble report rate per 100 access lines	2.3
(2) percent out-of-service troubles cleared within 24 hours	76.5%
(3) percent commitments met as negotiated with customer to clear troubles	83.0%
(4) percent service order provisioning completed within 5 working days	90.0%
(5) percent service order provisioning appointments met	Exception 99% Surveillance 98%
(6) percent calls completed in the toll/access network	99.4%
(7) percent offices above dial tone speed objective (within 3 sec)	98.0%
(8) percent switching offices performing at or above call completion objective	98.0%
(9) percent directory assistance calls answered within 10 seconds	82.0%
(10) percent toll and local assistance calls answered within 10 seconds	92.0%
(11) percent customers reaching the business office within 20 seconds for both residence and business	83.0%
(12) percent customers reaching repair within 20 seconds for both residence and business	75.0%
(13) Installation interval for local service in days Res	2.1
(14) Installation interval for local service in days Bus	4.5
(15) % installation commitments met for local service Res	98.0%
(16) % installation commitments met for local service Bus	98.0%
(17) Repeat out of service trouble reports as a % of initial out of service reports Res	37.6%
(18) Repeat out of service trouble reports as a % of initial out of service reports Bus	26.9%
(19) Average local service repair intervals in hours Res	22.35
(20) Average local service repair intervals in hours Bus	16.07
(21) BPU complaints per 10,000 lines	5.5

NOTE: The geographical areas reported in measures 1-5 and 10 are: Eastern Shore; Hudson/Bergen; Raritan; Southern; and Suburban.

Service to be Reclassified**A. Switched Services**

1. Customer Provided Pay Telephone	A message-rate, switched access, business exchange service for use with customer-provided pay telephones (CPPTs). A CPPTS line provides basic exchange access service plus an inward screening arrangement which identifies and disallows collect and third number calls to the CPPTS line.
2. DID Trunk Terminations	This service permits incoming dialed calls from the exchange network to reach a specific station line via DID equipped trunk without the assistance of an attendant through the use of a seven digit telephone number.
3. Exchange Access Lines – Basic	Basic exchange service is telecommunications service furnished to a business line within a specified geographical area for the purpose of local calling and to gain access to and from the telecommunications network for message telecommunication service. Basic exchange service as defined herein does not include P.B.X. Trunks, Centrex Network Exchange Access Facilities, and ESSX-1 Network Access Registers.
4. Foreign Exchange	Provides for the connection of a customer's location to a central office other than the central office in which the customer resides
5. IntelliLinQ BRI	Simultaneous access, transmission and switching of voice, data and imaging services on a business line. - IntelliLinQ Basic Rate Interface (BRI) Service is an optional, network service arrangement which uses the Basic Rate Interface (BRI) Arrangement of the Integrated Services Digital Network (ISDN) architecture. ISDN describes the end-to-end digital telecommunications network architecture which provides for the simultaneous access, transmission and switching of voice, data and image services. (Normally 2B+D channels.)
6. IntelliLinQ PRI	1.54 ISDN line provides simultaneous access, transmission and switching of voice, data and imaging services . Consists of a primary rate access facility, 24 channels - IntelliLinQ Primary Rate Interface (PRI) Service is an optional, network service arrangement which uses the Primary Rate Interface (PRI) Arrangement of the Integrated Services Digital Network (ISDN) architecture. ISDN describes the end-to-end digital telecommunications network architecture which provides for the simultaneous access, transmission and switching of voice, data and image services. Normally configured in channel combinations of 23B+D, or 24B.)
7. Internet Protocol Routing Service	Provides for the collection, concentration and management of the customer's traffic within a LATA. IP Routing Service consists of network routers located at LATA hub sites that will collect the customer's end user traffic and concentrate it for connection and transport over Switched Multimegabit Data Service (SMDS) Subscriber Network Access Line (SNAL).
8. Local Usage Message	A local message is a communication from a telephone or other CPE to another telephone or CPE bearing the designation of a central office within the local service area established from time to time by the Company as the local service area for the exchange serving the calling telephone.
9. PBX Trunks	A transmission path which serves as an exchange access line connecting P.B.X. switching equipment or similar equipment with a central office.

10. Switched 56	Provides the end user with the ability to send and receive data at a speed of 56,000 bits per second over the Public Switched Network. This service will be provided from specially equipped Company wire centers in conjunction with interoffice and loop plant facilities designed to accommodate 56 kilobits/second, full duplex, synchronous transmission.
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B1. Ancillary Services - Switched

1. AIOD	This service provides automatic identification of station line numbers when originating outgoing dialed message telecommunication calls and the billing of those messages through central office facilities at the serving central office.
2. Call Block	Provides customers with a way to block incoming calls from up to a maximum of 6 telephone numbers. Route to a standard announcement.
3. Call Forward Busy Line/Don't Answer	Combination of two features on one exchange access line. Call Forwarding Busy Line allows all calls that are made to a line showing a busy condition to be automatically forwarded to another line; Call Forwarding Don't Answer allows all calls that are made to a line that does not answer to be automatically forwarded to another line.
4. Call Forwarding	Capability to forward calls to another number
5. Call Trace	Automatically performs a trace of the last incoming call when activated by a customer.
6. Call Waiting	Audible tone signal over an existing connection to indicate incoming call.
7. Caller ID	Enables display of incoming calling number of a CPE device attached to customer line. Includes ACR Anonymous Call Rejection - allows customer to reject calls from parties that have used blocking to prevent the display of their telephone number on the Caller ID device.
8. Caller ID Manager with Name	Allows a customer who is on a call to receive the name and telephone number of a second caller and then determine how to manage that call - either put one on hold and answer the other; connect the second call to a hold or busy announcement or a voice messaging service; or conference the two calls together.
9. Caller ID with Name	Same as Caller ID, but name of incoming caller is displayed, as well as number.
10. DID Number Groups	DID Number Groups - A5 - DID telephone numbers furnished in blocks of 20 numbers.
11. Identia Ring	Identia Ring-A5.4.7, enables customers to have one or two additional telephone numbers assigned to a single local exchange line. Each number will ring distinctively so that it may be identified on an incoming call.
12. Message Service Interface	Sends call related data from the switching unit to customer provided equipment. MSI enables the customer to use the call related data to provide clients with services such as centralized call coverage and voice messaging functions. (SMDI).
13. Priority Call	Distinguishes up to a maximum of six calling telephone numbers from all others by using a distinctive alerting signal.
14. Remote Access with Direct Inward	This service permits incoming dialed calls from a central office other than the local serving central office to reach a specific station line, via a DID equipped trunk without the assistance of an attendant, through the use of a

Dialing	seven digit telephone number. Customers subscribing to this service are served from a capable DID equipped central office.
15. Remote Call Forwarding	Automatic reverse charge service customer can arrange for others to call him without paying the toll charge from a specific exchange to the customer's location.
16. Repeat Dialing	Automatically redials last outgoing telephone number dialed by the customer.
17. Return Call	*69 automatically provides a voice statement of the telephone number of the most recent incoming call and when activated then dials that telephone number.
18. Ring Count Change	Allows customer's clients to request, via customer service, a change in the number of rings before calls are forwarded via Call Forwarding-Busy Line/Don't Answer or Call Forwarding-Don't Answer, rather than requiring clients to make this change via a separate call to the company.
19. Select Class of Call Screening	A service by means of which the administrative handling of toll calls, made by the customer's telephone users, is performed by company employees. Directly dialed (unassisted) outgoing, non-local calls are routed to a company operator, who processes and bills the calls as instructed by the calling or called party. The service permits the customer to designate those telephones from which only non-sent-paid toll calls can be made.
20. Select Forward	Provides a way to forward incoming calls from up to a maximum of 6 calling numbers to another numbers.
21. Speed Dialing	Provides for calling a seven or ten digit number by dialing only a few digits. Comes in 8 number and 30 number version
22. Switched Redirect	When activated by the customer, will redirect all or part of the customer's incoming switched voice and data calls to another location(s) or other site. Customer locations mean premises other than the company premises owned or leased by the customer or a subsidiary of the customer.
23. Three Way Call Transfer	This feature allows exchange service customers to transfer incoming calls to another party, thus freeing their line to initiate or receive other calls. This feature also enables the customer to add a third party to a call in progress and, after establishing the three-way conference, to drop off the call without disconnecting the remaining end users. Usage continues to be recorded and will be charged to the originator of the three-way conference.
24. Three Way Calling	Allows an existing call to be held and a third telephone number to be dialed and added to the connection.
25. Toll Diversion	Limits directly dialed calls to the central office designations in the customers local calling area; also denies access to zero (operator) dialing.
26. TouchTone	Enables customer equipment to originate calls using tone-type address signaling and special central office facilities.
27. Uniform Call Distribution Service	Provides for the uniform distribution of incoming calls, in order of their arrival, to specified telephone lines. Uniform Call Distribution Service is offered for use with all types of exchange access lines excluding lines of Centrex services, provided such telephone lines are arranged in a common multiline hunting group and served from compatible switching equipment.

28. Call Completion Local	Operator assisted local calls, including local Customer Requested Intercept.
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B2. Ancillary Services – non-switched

1. Additional Listings	Extra listing of customer name in the white pages of the directory.
2. Joint User Service	A shared arrangement which allows the business exchange telephone service of a customer (i.e., the customer of record) to be used by other individuals, firms or corporations when designated by the customer.
3. Non-Published Listings	At customer's request, primary listings of name, address and telephone number will be omitted from the printed directory.
4. The WorkSmart Package	A discount billing arrangement for business customers that subscribe to one of seven different features packages for a fixed term. The rates for the packages vary based on the length of the term. An additional discount off the regular WorkSmart Package rate is given if a new additional business access line is ordered and equipped with the WorkSmart Package.
5. Small Business Economic Development	The Small Business Economic Development Incentive (SBEDI) program, which must be coincident with participation in the New Jersey Urban Enterprise Zone (UEZ) program, permits the Company to offer discounts.

C. Private Line Services

1. Channel Services	Channel Services - B, Channel Tariff - private lines, sub-voice grade (type 1000) and voice grade (type 2000 and 3000), associated mileage etc. The services and related features that enable a non-switched path for electrical (or optical) communication between two or more terminals or company central offices. A channel is furnished in such a manner as the company may elect either by wire (fiber) or radio facilities (or combination thereof).
2. Mileage Charges for Extension	Applicable in connection with extension service when the extension service and the main service with which it is associated are in different buildings.

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